SEMINAR OF ARAB JURISTS ON
PALESTINE
ALGIERS, 22 - 27 July, 1967

THE PALESTINE QUESTION

THE INSTITUTE FOR PALESTINE STUDIES
BEIRUT, 1968

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by
EDWARD RIZK

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INTRODUCTION

The renewal of Israeli aggression against the Arab countries on June 5th, 1967, has made it more than ever necessary to analyse the various juridical aspects of that aggression, with the aim of further enlightening world opinion. This was the objective of the Arab Jurists' Seminar on Palestine, held in Algiers from July 22 to 27, 1967, which, at its first session, divided itself into three working committees.

The first committee, presided over by Mr Edmund Rabbath, professor in the Faculty of Law at the University of Beirut, and advocate at the Court of Appeal, concentrated on the question of *historical "rights,"* so convinced was it of the thesis that Palestine is an Arab land, and so loath to believe that historical rights based on Biblical promises could, in the view of reasonable men in the XXth century, justify the creation of Israel.

With a legal background and training matched only by their lofty moral scruples, the members of this committee dwelt more on the legal aspects of the subject of their deliberations—aspect with which they are more familial—drawing on the historian and the sociologist for such additional information as they required.

The Zionist travesty of history obliged the Seminar to concentrate first on the past, but its main task was the study of the legal titles adduced in support of the establishment of Israel. The Seminar's second committee undertook this study under the chairmanship of Ambassador Mustafa Kamel Yassin, Head of the Permanent Mission of Irak to the United Nations in Geneva, member of the International Law Commission and of the Institute of International Law.

The implications of the Israeli-Arab conflict were considered

by the third committee, under the chairmanship of Madame Aicha Rateb, Professor in the Faculty of Law at Ain Shams University in Cairo. The very large number of problems arising out of this conflict has given us a report that is considerably more voluminous than those of the two other committees, even though the subject considered did not *stricto sensu* or solely concern Palestine, and is therefore regarded, by those who took part in the Seminar, as being of secondary importance. Nevertheless, the work of the third committee has shown how many and how grave may be the implications and consequences of an illegal act.

The work of these three committees constitutes the subject matter of this book, in which jurists have sought, as best they could, to express their views on one of the gravest problems of our time. They have done no more—and no less—than condemn all that is prejudicial to right and justice; that is their role and their privilege as lawyers. The reader, therefore, must not expect to find, in the following pages, a miraculous solution of the problem. The search for such a solution is the role and the privilege of politicians.

Inaugural address Delivered by Mr. Mohammed Bedjaoui, Minister of Justice on July 22, 1967

Ladies and Gentlemen,

At a time when a region of the world is living through the darkest moments of its history, as a result of an infamous aggression, at a time when, in an attempt to justify this criminal act, the public opinion and the conscience of the world have been subjected to a relentless propaganda campaign employing both words and pictures, this meeting in Algiers wishes once more to emphasise the determination of the Arabs to defend their rights and never to accept a *fait accompli* brought about by force, in utter disregard of the rules of international law and the principles of international morality.

Through today's meeting, Arab jurists wish to testify to the right of the people of Palestine, which, long misrepresented and denigrated by enemy propaganda, is based on an unassailable case. They wish to disperse the fog and to bring the truth into the open. They are determined not to shirk any battle, especially in view of the fact that, in the juridical, as well as in other fields, the enemy is armed with weapons which have conquered both a general and specialised opinion with such extraordinary ease. It is important that the truth, hitherto stifled, should recover its impact.

At a moment when a usurping State is being forged by the fire

of battle, the Arabs will, no doubt, once more be accused of idealism because they continue to insist on right and justice. They have no objection to this accusation if by idealism is meant the refusal to admit the bankruptcy of those legal principles which have transformed nations into civilised entities, and the determination to persist to the bitter end in proclaiming the right when a cause is just.

Our world is witnessing astounding paradoxes. A dismal tragedy in unfolding in this Kafka universe where the "Honest Iago," Israel, imprisons the Arab peoples.

Once again, the power of money has crushed the humble. Once again, it has not only shattered material things, but corroded human soul, debasing everything it touches. The all-powerful magic of money has made the false seem true, the unjust seem just. We live in a world where the victim of infamous aggression is regarded as the aggressor, while the latter, cunning and powerful, is seen as the victim, thanks to an international conspiracy, to which long preparation has given a semblance of spontaneity.

One *fait accompli* follows on another and alas! apart from the protests of a few distinguished but isolated persons, meets with approval—a strange kind of approval, indeed—it is difficult to tell whether its peculiarity lies in the relief it supplies to a troubled conscience or in the good faith it abuses.

When in certain countries the left becomes, for the occasion, the right, while the right undertakes a totally unexpected crusade on behalf of those it has traditionally persecuted, when the grave and disquieting designs of some and the ulterior motives of others are no longer regarded by anyone as a cause for alarm, one realises that all are engaged, consciously or unconsciously, in a conspiracy to ensure the triumph of racialism, of the law of the jungle. Today it is the Arabs who are the victims of this conspiracy; who will be the next? One thing we can be sure of: whoever they are, they will always be the humble and weak.

A racial theory propounded, this time, not by the author of *Mein Kampf*, but by the Israelis and all those who assist them in humiliating, plundering and maiming consciences, is forcing its way

to the surface, growing stronger, and spreading like wildfire, amidst almost unanimous approval.

Is it not ridiculous that the human mind should ever be conditioned by mirages! Yesterday's victim becomes today's hangman with the greatest of ease, and no one is surprised or perturbed. The doctrine of "get out, I'm coming in," on which Israel is founded, is presented as an operation to rescue a persecuted people. A more judicious view of this doctrine, as a usurpation repugnant alike to law and morality, is rejected out of hand.

If the question of who was the aggressor is ever raised, it is only to point an accusing finger at the Arabs. It is forgotten that in 1948 Israel set herself up as a State by presenting the world with a *fait accompli*; that in 1949 she violated the Armistice Agreements and seized the northern part of Palestine and the entire Negev, including the port of Elath; that in 1956 she and her accomplices launched a crushing onslaught; that, since then she has been condemned as an aggressor by the U.N. Security Council not less than eleven times; and that only last month she pounced on the Arab countries in a surprise attack.

A pretence is made of conceding that the Arab countries were not the direct aggressors, but this concession is immediately qualified by the assertion that they (i.e. the Arab States) were at least responsible for having driven Israel into a position which left her no alternative but to attack. It goes without saying that, in the view of many people, the attack of June 5th was no more than the legitimate reaction of a people defending its existence and protesting against the closure of the Gulf of Aqaba.

Now there are two ways of writing history. One consists in resuscitating the past and attempting to give a complete explanation of it. This is how a real historian works. The other consists in taking few facts only, in viewing them separately and not as part of a long chain of causes and effects, deliberately isolating them and retaining only those which can be used to support a given point of view.

The closure of the Gulf of Aqaba must be restored to its proper place in the long series of events which preceded and followed

the creation of the State of Israel.

The establishment of Israel, by cunning or by force, but always by fraud, on soil which was undeniably Arab—because it had been under uninterrupted Arab sovereignty for centuries—was carried out at the expense of the Arab peoples and in the teeth of their continued protests. In the series of territorial expansions of the Jewish State since 1948, the episode of the closure of the Gulf of Aqaba was but one phase of a conflict which has been interrupted only by armistice agreements and never by a peace treaty, a conflict which was begun by the creation of this State, and in this lies the aggression. This episode is a mere concomitant of the fundamental fact, which was the creation of Israel on and out of Arab territory. The incident of the Gulf of Aqaba, like all other incidents past and future, cannot be logically analysed in isolation from the fact of Zionist settlement in a land specifically Arab, a settlement which has never been accepted, and which constitutes the basic cause of the conflict and fully explains it.

Who is the aggressor? The intruder who, without right or title, has taken possession of another's house and cries foul play whenever an attempt is made to evict him? Or the rightful owner, who has been clamouring in vain for his rights for nearly half a century and asks for nothing but the restitution of his property?

Then this squatter, discovering no doubt that he has not yet bled his victims white, and using as his pretext their will to resist, pounces on them with the cry that he will never relinquish what he has conquered by brute force.

Can it be that these repeated acts of theft and violence have had the quality of conferring some right on those who committed them, thus legalising the forcible dispossession of Palestinians and Jordanians? If this is so, then it must be admitted that international law has given its sanction to such practices as housebreaking, theft, conspiracy, and assassination, which national law does its best to curb.

This is just one of the paradoxes—a new one, indeed, but there are others which the conscience of mankind finds even more

painful and crushing. For who could have predicted that the children of Israel, persecuted as they were, would themselves turn persecutors and inflict upon the Arab peoples—and it was not the Arabs who invented the death camps—the same tortures and sufferings to which some of them were subjected before their extermination. Far from repudiating the methods and doctrine of *Lebensraum,* the Zionists have integrated them into their baneful ideology, to spread mourning and destruction everywhere.

And what an astounding form of justice it is that allows that these Arab peoples, and they alone—the very peoples amongst whom the Jews lived quietly and peacefully for centuries—should be held liable to pay the outrageous price of the creation of Israel, which was achieved regardless of the tears and blood of our brethren. The Arabs, it seems, have had to pay for and expiate the outrage committed against mankind in Treblinka, Auschwitz and elsewhere.

How can "pax in terris" ever be established if, following Israel's example, every community claims the right to return to the land which belonged to its ancestors twenty centuries ago, and which has always been the land of the ancestors of others? Such extravagant claims merely add insult to injury.

There is, alas, a certain dynamism in the commission of crimes. The creation of Israel by force in itself evokes repeated breaches of the armistice agreements, those props for expansionist thrusts. The conquest of the port of Elath in 1949, in breach of these agreements, is then used to justify the claim to consider as an international, that is, an Israeli waterway, the Gulf of Aqaba whose Arab status in international law is well established at least as far back as the Middle Ages.

In this increasing number of *faits accomplis* perpetrated by Israel since 1947, there is no longer any criterion of right but might and success. Land cleared for cultivation and drained marshlands belong to those who have made them fruitful. Thus by a radical and perverted extension of the thinking of the dramatist Berthold Brecht, racialist law is identified with the law of the jungle, which imposes

ruthless natural selection. Those who cannot adapt themselves, or who lag behind, must perish! Their fate is sealed. They must disappear to make place for those who, flushed with the pride of their money-civilization built on stock-jobbing, breathe new life into imperialism.

That Israel should deprive the Arabs of their land seems quite natural—did she not pay them for it? (and what a price, fixed as it was by the simultaneous play of usury, blackmail, terror and encirclement!) Why should the Arabs shed tears over the loss of a homeland? In this world of money, is a homeland anything more than the sum of parcels of land which can be bought? Why should the Arabs revolt if the fortunes of war led to the rest of their land being conquered? Has not might been right since 1947?

And the price paid for the purchase of land in the twenties and thirties will be recovered from the property left behind by the refugees, and from the confiscated bank accounts of Palestinians who have fled.

We are still naïve enough to believe that the displacement and dispossession of an entire people in favour of aliens coming from abroad, is not acceptable in the present state of international law and of the collective conscience of nations.

We are naïve enough to think that countries can no longer be bought and sold, as was the case, for example, with a Phoenician factory in ancient times, or, more recently, with Corsica, Alaska or Louisiana. It would perhaps be asking too much of mystifiers of all sorts to get them to acknowledge that we are in the 20th century and that the Arabs, whose monumental civilisation brought learning and education to the Middle Ages, are not the Red Indians of America or the aborigines of Australia.

The law of the jungle, like racialist laws, must not prevail.

How many countries, when they see Israel depriving its neighbours of water, after having driven the refugees to starvation, will take the trouble to do more than lay the blame on the Arabs themselves? Israeli plans for diverting the waters of the Jordan and its tributaries in Syria and Lebanon have evoked not the slightest reaction

from those who are only too ready to claim an international status for the Gulf of Aqaba. Yet it is surely impermissible to divert a river if such diversion deprives all the users living in its basin of access to its waters.

We are, according to an oversimplified view of us, men who deny a people the right to live. This is a 'crime' for which world opinion, either because it is too idle to think for itself, or because it has been submitted to so much propaganda that it has lost all power of independent thought, cannot forgive us. But what right has Israel to live?

Can the right to self-determination be applicable to a number of individuals dispersed all over the world and integrated into the respective countries they live in, individuals who have nothing in common save their religion, and who by no means constitute a people in the sociological sense of the world? Well, let us admit that this can be so, even though such an admission runs counter to all the principles of international law. What then is Israel's right to exist? It is, so it is claimed, the right to determine her own destiny freely; it is also the right of every Jew in the world to return to the "Promised Land." Thus, every Jew in the world is regarded as having the right to settle in Palestine, which was deserted by his forefathers 2,000 years ago, while at the same time the Palestinian is not recognised as having even the shadow of a right to return to the land which he was forced to quit a mere 20 years ago, or, indeed a bare month ago, as a result of the present conflict. This is certainly a very peculiar line of reasoning.

Very well then, let us admit Israel's right to self-determination and existence. But in that case, surely the same right should be allowed to the Palestinians?

In the view of some people, whose reasoning runs on these baffling lines, the remedy is ready to hand. Israel could receive the Jews living in Arab countries, while these states could resettle the Palestinian Arabs in their territory. A sterile argument indeed, not only because of the comparative figures of those involved—the million and half expelled Palestinians is totally out of proportion

to a few thousand well-protected Jews who have lived or still live in the Arab World—but mainly because it turns the problem completely upside down. In their search for a homeland—admitting that they have the desire and the right to do so—the Jews have taken the homeland of the Arabs, all of whom certainly have both the desire and the right to recover it. This is the whole problem. By raising the question of the Jews from the Arab countries who have been integrated into the Jewish state, Israel thinks to absolve herself—on the contrary she condemns itself. For every integrated Jew has taken the place of a Palestinian expelled from his home and condemned to exile.

The subject of the Palestine refugees is presented in an infinite variety of forms, according to the whims of Israeli propaganda, whose inconsistencies do not seem to worry its authors at all. The same quarters tell different stories on different occasions. Sometimes they represent the Palestinians as having received express orders to remain in Israel to play the role of a permanent "fifth column" in that country. At other times the Palestinians are portrayed as having carried out the order to withdraw completely from Israel so as to enable the Arabs to pounce on her and annihilate her completely.

To reduce Israeli-Arab confrontation to a mere religious conflict is not only to oversimplify the matter, but also to commit a moral fraud. And a double fraud, at that, for it is the Arab who is condemned (without possibility of appeal) as the one who conceives and wages holy war, when in fact holy war is much more characteristic of the actions and philosophy of the Hebrew State.

According to Dr. Goebbels's reasoning, the bigger the lie, the greater its destructive power. Under these circumstances, is it conceivable that the truth should be accepted with no further support than the fact that it is self-evident?

So it is the fanatical Arabs who wage holy war? But who uses the expression "Promised Land"?

And were not its terms of reference strictly and narrowly religious; inasmuch as they derived primarily from the determination that a four-thousand-year old "Biblical" promise should be fulfilled

when the Jewish State decided to come into existence and flourish on a confessional basis? What war could be more religious, in the most odious meaning of the expression, as remembered by victims of intolerance, than this permanent armed aggression committed by the Jews against the Arabs to ensure the realisation of a Biblical promise?

So it is the fanatical Arabs who wage holy war? Let us break down the doors and let the light in on some of the truths that have so conveniently been ignored. Let us recall that the Arabs are of various faiths, especially Christian and Moslem. What do Christians throughout the world think of this odious travesty of facts to which their co-religionists have fallen victim? And it makes no difference if the Arabs are Christian or if the Christians are not Arab: one and all are the object of constant persecution by Israel, which remains the sole—and little to be envied—guardian of religious fanaticism.

Here is one incident among so many others which mark the course of the daily sufferings of non-Jews. On July 11, 1954, while priests were conducting services, the Israelis opened fire on Jerusalem; 19 shells fell on the Armenian convent, 8 on the Protestant church, and one on the Holy Sepulchre; the Russian convent was also severely machine-gunned.

At about the same time, the bishop of the Greek Catholic community had to ask the commander of the Haifa garrison to take the necessary measures to prevent the renewed desecration of cemeteries by the Jews.

In Jaffa, the Hassan Bey mosque has become a cabaret, that of Acre has been transformed into a store and that of Haifa into a police station. These are three features of this "democratic" Israel: Islam has had to give way, in the face of repression, to the lust for profit and the craving for licentiousness.

And in Jerusalem, which today lies captive, the vociferations of the rabbi who is Chaplain General of the Israeli army, hailing "the return of a people to its capital," have aroused echoes which still reverberate, echoes which disclose the concern and grief of the

world of believers, Christian or non-Christian, at the Israelisation of Jerusalem.

If there is holy war, it is surely that which has constantly led Israel against all that is not Jewish.

The cause for this pernicious holy war, which a bewildered world wrongly ascribes to the Arabs when it is, in fact, the Zionists who are waging it, is to be found in the expansionist aims which Israel is careful to conceal. "Unto thy seed have I given this land, from the river of Egypt unto the great river, the river Euphrates." In the light of all this it is not difficult to appreciate why the Arabs, already the victims of aggression in the form of Zionist settlement in their homeland, fear the expansionist "Biblical" objectives of Israel. In its structure and its philosophy, in its very nature and essence, Israel is a country in search of *"Lebensraum,"* of living space, to fulfill the prophecy and realise the imperialist interests on which it flourishes. Since, unfortunately, for lack of unanimous opposition to it, might now generates right, Israel entertains the hope—hitherto encouraged by her success—of gradually achieving the Anschluss of Syria, Jordan, Lebanon, Iraq and part of the U.A.R.

This is evidenced today, as in '47, '48, '56, and '57, by the expansionist claims of Israel, openly proclaimed in violation both of U.N. resolutions and of international law relative to military occupation. Israel has no intention of withdrawing from Jerusalem or from the other occupied territories, and the Knesset, defying international law, has unilaterally decided to annex the Holy City. This, of course, does not yet provide sufficient grounds for categorically accusing Israel of waging a holy war. For in the language of Abba Eban, annexation, which is and remains forbidden by international law, is replaced by the euphemism "technical unification."

On May 14, 1948, General Cunningham, seventh and last British High Commissioner since the establishment of the Mandate over Palestine by the League of Nations in 1920, said, when he finally left his official residence in Jerusalem: "We have often been unable to discern the future. This is why we must humbly state that we accept the judgment of History."

Yes, History will, indeed, pass judgment on all the crimes committed against the Arabs.

A few days ago, an imposing procession took place in Geneva; thousands of jurists of all races and creeds marched in silence, to testify to the supremacy of law. It must have been an impressive spectacle. But which of them, in fact, felt any concern for the rights of the Arabs, repeatedly betrayed, always patients, never agents?

Yes, History will judge; as it will also judge the apparent victory of present-day apostasies; as it will judge, too, those who, while applauding the success of the agressor, hypocritically appeal for charity to help the poor Arab refugees—hungry they are, no doubt, but hungry for justice above all else. I have in mind that allegorical painting in which the goddess philosophy, become insane, points a vengeful finger at the victim who collapses under the blows of the criminals.

The fact that the international lawmaker should be suddenly smitten with paralysis and rendered powerless to judge the crime which is being committed, does, indeed, reveal the power of the combined forces of our enemy, but it must also engender some feelings of bitterness and anxiety as regard the fate of the World Organisation. Is not this Organisation in danger of becoming an instrument as obsolete as the League of Nations was during the twilight years of its existence? We fear that it may come to resemble those famous Egyptian monuments which have conquered time: "The passing stranger approaches them, and marvels at their grandeur, but, if he wishes to enter them, what does he find inside? Lifeless ashes and the silence of the grave."

But all this, and the disguising and ignoring of so many contradictions are really just one more example of the weak being crushed by the strong. It is our fate to be among the oppressed millions who are a constant reminder of man's inhumanity to man on this earth. But the day will come when, through our work, our organisation and our discipline, in our faith and our pertinacity, we shall lead the revolt, irresistible and victorious, of these oppressed people of the earth. The day will come when we shall weave the

shroud of imperialism long abandoned by the moral values, which have left it, with our refugees, to seek asylum among us and within us.

PART ONE

HISTORICAL "RIGHTS"

The fight in which the Arabs are engaged to ensure the integrity of Palestine is the struggle of a people for its liberty and for the recovery of its fundamental right to reoccupy the land which is its own. Israel has made the most strenuous efforts to justify her existence as a state set up in the heart of the Arab nation, but neither the Arab nation nor any man who respects the law could possibly consider as legal a "solution" involving the expulsion of millions of Arabs from their fatherland and their replacement by non-Arabs. And these jurists rightly invoke the principles of international law to affirm the nullity of such acts as regards international legality.

Skilful propaganda has attempted to induce world public opinion to accept certain ideas which the most superficial examination reveals as false! Sometimes this propaganda stresses the existence of historical rights as a foundation for the rebirth of the Jewish State from the ashes under which it had been buried for two thousand years. Sometimes it strives to set the creation of Israel within the framework of the struggle of nationalist movements which have fought to secure recognition for the right of those communities, whose aspirations they have embodied, to self-determination. Sometimes again it recalls the persecutions to which the Jews have always been subjected to justify the creation of a State in Palestine under whose protection they could henceforth live in peace. And, finally, it sometimes lays stress on the 1947 resolution of the United Nations on the Partition of Palestine, and on certain so-called international acts which preceded it, in an attempt to prove that the State of Israel has an unquestionable juridical basis.

I. — THE FALSIFICATION OF HISTORY

If this formula of historical "rights" is to be invoked at all, it is the Arabs, and the Arabs alone, who have any right to do so. An objective analysis of historical facts and the lessons that can be learnt from them, establishes without any doubt that Palestine has never been anything but a specifically Arab land, inhabited by a

people speaking the same language, united by the same cultural aspirations, nurtured by the same aspirations and linked by common interests.

1) PERMANENCE OF THE ARAB CHARACTER OF PALESTINE

Arab for nearly four thousand years, Palestine has preserved this Arab character, although several human groupings or States have conquered it in the course of history.

a) It is recognised that, as the Old Testament tells us, Palestine was the place where tribes of Canaanite Semites settled; the geographical origin from which these tribes sprang proves them to have been Arabs. *The Hebrew tribes did not enter Palestine* until the 13th or 14th century B.C. when, under the leadership of Joshua, they conquered certain parts of it. They found there a flourishing civilisation; the Bible provides ample evidence of its prosperity. The Canaanites had been established in Palestine since the Neolithic period and were descended from tribes of Semitic stock whose original cradle was, according to theories generally accepted today in the scientific world, in the Arabian peninsula.

Historically, therefore, the ancient Hebrews were not born in Palestine. And when they did come to Palestine for a brief period of time, they never occupied the whole of what is now Israel. The coastal plain remained in the hands of the Philistines, who gave it their name (Palestine.)

The basic fact that must be emphasised in subsequent discussion, therefore, is that the land of Canaan, which was inhabited by Canaanites, who were Semites and therefore Arabs, was later conquered by alien Hebrew tribes.

But this Jewish entity was not to last long. Divided into two hostile kingdoms, Israel and Judah, it was soon overwhelmed, from the 7th century B.C. onwards, by successive invasions of Persians, Macedonians, Assyrians and Babylonians. Then, in the year 64 B.C., Rome seized Jerusalem and extended her dominion over Palestine, which was then inhabited by Jews, Idumeans, Itureans, Ammonites

and Arabs. It is from the year 120 A.D., when the emperor Hadrian crushed the revolt of the Jews and drove them out of Jerusalem, that Palestine can be considered as having become an Arab province once more. The *Provincia Arabia* of the Roman Empire was, in fact, Palestine which, after having been subjected to the influence of Christianity, became Moslem in the 7th century.

It is clear from these facts that the Jewish political presence in Palestine came to an end almost at the beginning of our era, and that the period during which it did exist was not long enough for it to prevail over Arab legitimacy.

b) By putting an end to the Latino-Roman, later Byzantine, dominion of Palestine, the Arab victories came as a liberation for the Christian and Jewish communities. The dying Empire had confined both Christian and Jew in a system of rigid discrimination, of which an abundant religious literature has given a merciless description. Five centuries after the abolition of this system, Syrian authors, particularly Michael in the 13th century, were still emphasising the liberating character of Arab power.

All these communities welcomed Arab rule, especially the Jews, who were to become some of the Arab rulers' most loyal subjects.

c) The period of the Crusades was marked by the persecution of the people of Jerusalem and the depradations inflicted on all communities, Muslim, Jewish and Christian alike. It was not until the Ottoman conquest of Palestine by Sultan Selim in 1516, that the protection of these believers was secured. It was the same for the Jews in other places. It should be recalled that, at the beginning of the XVIIth century, Cardinal Ximenes, Prime Minister of Ferdinand III of Spain, ordered that they be expelled from Andalusia,[1] along with such of the Arab minority as still remained in the country. The only places of refuge then open to the Jews were the Arab Maghreb and the Ottoman Empire.

In Istanbul, Izmir and other towns of the eastern Mediterranean

[1] - There had been a first exodus of Jews from Spain after the persecutions of 1492.

there are still communities of Spanish Jews who have preserved their traditions, their rites and even their ancient Castilian language.[2] This survival is due to the protection which they enjoyed under the Ottoman regime and, later, to the immunities written into the constitution of modern States.

d) The Arabs accepted Ottoman rule, to which they had been subjected since the XVIth century, because they believed that they were living under the traditional system of the Islamic Caliphate. However, they rapidly recovered their nationalist feelings, and it was not long before they revolted and shook off the Ottoman yoke.

The occasion for this was provided by the First World War, when the Sublime Porte found itself committed on the side of Germany. The Arabs then began their revolution for liberation; with the support of the Allies who, in an exchange of letters known as the "Hussein-MacMahon Correspondence," promised to recognise the independence of the Arab States detached from the Ottoman Empire. It was these promises, in fact, which induced the Arabs to revolt during the summer of 1916. They first succeeded in liberating the Hejaz; from there, their army advanced to occupy Jericho and Damascus. At the same time, Great Britain, from her base in Egypt, launched an attack on Palestine in 1917 and succeeded in occupying it, thanks to Arab support. Great Britain then set up a military administration in Palestine, which meant that she was to administer the territory in this manner until such time as its inhabitants, of whom 90% were Muslim and Christian Arabs, were in a position freely to decide their own destiny.

The lessons provided by the analysis of these historical facts may be summarised as follows:

a) The Hebrew tribes, in fact, were no more than one among many waves of immigration, and the Kingdom of the Jews was only able to maintain its sovereignty in Palestine for a very limited period, two thousand years ago.

b) Before the arrival of the Hebrews, Palestine had always

[2] - Some of these communities speak a derivative language, *Ladino.*

been Semitic-Canaanite, that is to say, Arab, in view of the fact that the Semite is, geographically speaking, of Arab origin. It was Christianised under the Roman and Byzantine Empires, but this event, of course, in no way changed its Arab character. Finally, after the fall of Byzantine and the Arab victories of the VIIth century, Palestine of course continued to be an Arab land where Moslems, Christians and Jews lived in freedom and in peace.

c) The Jews recognised Ottoman no less than Arab sovereignty, the former having taken upon itself all the obligations arising from Islamic Caliphate. Under both the Jews found that protection which neither the Byzantine Empire nor the other European States were willing to grant them.

It is thus clear that all legal and political links between the Jews and Palestine have been severed for the past two thousand years.

Historical rights are closely linked with the effective exercise of sovereignty. This being the case, the Jews are in no position to invoke such rights; if they do so, then the Arabs must be allowed to claim sovereignty over Spain, which they ruled for nearly eight centuries. Such claims find no support in international law.

d) On the other hand, the claims formulated by the Arabs immediately after the secession of Palestine from the Ottoman Empire, are based upon the soundest principles of international law, particularly that of self-determination. Moreover, the Arabs could avail themselves of the promises made by Great Britain in the Hussein-MacMahon Correspondence, especially in the letter sent by the latter to the Sharif Hussein on October 25th, 1915, in which England declared her readiness to recognise the independence of the Arabs within the frontiers traced by the Sharif, and to guarantee the integrity of the Holy Places.

This policy was opposed by the Zionist movement, which passed through several stages before it finally took the political form given to it by the man who may be considered as its founder, the Austrian journalist Theodor Herzl, author of the book "The Zionist State," published in 1896. At a congress, held at his suggestion in

Basle on August 29th, 1897, Herzl mooted the idea of the creation of a Jewish national home in Palestine. Despite the opposition of several Jewish communities, he was able to get the congress to adopt a Zionist programme for the creation of a Jewish homeland in Palestine which would bring together immigrants from various countries.

To justify this solution, which left world Jewry profoundly divided, the Zionist movement expounded the theme of the existence of a Jewish people, a Jewish race, a Jewish nation, and announced, quite untruly, that the Jews are the descendants of the ancient Hebrews, and that they have much more than their religion in common. It was a surprising point of view to adopt, so surprising indeed, that the Zionists felt it necessary to launch a vast propaganda campaign designed to get this new "truth" accepted both by the European States, which were reluctant to give their positive support to the establishment of a Jewish national home in Palestine, and by the Jews living in many countries, who were by no means convinced that they belonged to the same people, the same race and the same nation.

2) THE ZIONIST CONCEPT OF A JEWISH NATION

When Weizmann, the president of the Zionist movement, decided to take action to put an end to the hesitations of the Allied Powers, divided by colonial rivalries and little inclined to provoke unfavourable reactions in the Arab world, he held conversations mainly with the representatives of the British and French governments, Mr Sykes and M. Picot.

Certain Jewish circles, in Britain and elsewhere, were opposed to this concept, asserting that Zionist ideas were inconsistent with the principles of the Jewish religion and were liable to weaken the position of the Jews who were already integrated into European societies. Similarly, the American-Jewish Committee and the Franco-Jewish Alliance were opposed to the Zionist movement for exactly the same reasons.

Writing as a Jew, Sir Edwin S. Montagu, Secretary of State

for India in the Lloyd George government that, in 1917, ratified the Balfour Declaration, in which Great Britain "promised" Palestine to the Jews, said: "Zionism has always seemed to me to be a mischievous political creed, untenable by any patriotic citizen of the United Kingdom. If a Jewish Englishman sets his eyes on the Mount of Olives and longs for the day when he will shake British soil from his shoes and go back to agricultural pursuits in Palestine, he has always seemed to me to have acknowledged aims inconsistent with British citizenship and to have admitted that he is unfit for a share in public life in Great Britain, or to be treated as an Englishman... It is quite true that Palestine plays a large part in Jewish history but so it does in Christian history. The Temple may have been in Palestine, but so was the Sermon on the Mount and the Crucifixion."[3]

Nevertheless, the Zionist movement continued its activities with the object of securing recognition for Palestine as the "unforgettable historical fatherland" of the Jews, despite the denials of history and sociology.

With unusual perseverance, it portrayed the Jews as one nation, one people and once race.[4] And yet, as has been shown by an expert on the subject who is himself of Jewish faith, not to mention many others, the Jews do not "constitute a clan, a tribe, a nation in the strict sense of the word... In the light of their past, it is strange that the Jews should be considered as a distinct race and that such efforts should be made to prove it... There exists no decisive evidence to support the claim that the Jews constitute a racial entity, at least in the sense of the traditional criteria of racial

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[3] - Excerpt from secret documents published by the British Government. Text number CAB.24/24. *The Antisemitism of the Present Government,* by Sir Edwin S. Montagu, August 25th, 1917, quoted by Sami Hadawi in: "Les revendications 'bibliques' et 'historiques' des Sionistes sur la Palestine," *Les Temps Modernes, Le Conflit judéo-arabe, dossier,* 1967, no. 253 bis, Paris, p. 98.

[4] - See, in particular, Marcel Bernfeld: *Le Sionisme,* thesis for Doctorate in Law, Paris, 1920, Jouve edit., 458 pp., (the author was responsible for the Zionist movement in France. It requires a good deal of indulgence to read his astounding conjectures on the concepts of nation, race, people. (Cf. The first part of the book entitled *La Nation Juive,* pp. 29-121.)

classification."[5]

Examination reveals the "historical rights" of the Jews over Palestine to be non-existent. They are all the more inconsistent in view of the fact that the Jews who came from Europe to Palestine cannot be regarded as heirs to the ancient Hebrews of the Holy Land. For, in fact, many Europeans were converted to Judaism in the Middle Ages. The Turkish Kingdom of the Khazars in south-east Russia, under its King Bulan, adopted the Jewish religion in 740 A.D. In the 18th century a wide movement of conversion to Judaism, inspired and encouraged by the Byzantine Jews, reached the Caucasian Russians, whose descendants, scattered throughout central Europe, Russia, Poland and the United States, gave Israel its immigrants and even its present political leaders. There were also yellow Jews and black Jews from Malabar and Cochin, and the Felashas of Ethiopia. Any attempt therefore to consider the Jews as a race and a people when they are no more than a religious community—and a non-homogeneous one at that, for it is divided into sects[6]—constitutes an unauthorised exploitation of their religious feelings, as will be shown later.

Nevertheless, Zionism continues to base itself on the expression "Jews," or "Judaism," to emphasise that it is political, and not religious in character, implying the existence of a Jewish nationality, distinct by its race, its culture, its language, its history, and its aspirations.

The objections to these claims can be briefly summed up as

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[5] - Harry L. Shapiro (head of the Department of Anthropology of the American Museum of National History): *Le Peuple Juif: une histoire biologique,* Geneva, UNESCO, 1960, pp. 74-75. Cf. Also the works of Juan Comas, professor of anthropology at the University of Mexico, on the notion of race.

[6] - Traditionally, a distinction is made between the *Sephardim,* Mediterranean and Oriental Jews, the *Ashkenazim,* European Jews, the *Karaites,* Iraqi and Egyptian Jews, and the *Hassidim,* Jews of the Mea Shearim quarter of Jerusalem. It is also to be noted in passing that Israel is notorious for practising discrimination even between her own Jews: it is always the "Orientals" — the Sephardim and Karaites who are the victims. Cf. "Israel et les Pays Arabes dans le Moyen-Orient depuis 1948," *Les Cahiers de l'Histoire,* Paris, October-November, 1967, No. 70, pp. 18-23.

follows:

a) The Jews do not constitute a homogeneous racial unit. A few fanatical Jews may believe that they descend from pure and choice Semitic elements, but studies refute this belief, which is, in fact, a pure myth. In reality, the Jews, like all other religious groupings, have their origins in different races.

b) The Jews do not have one common language, for the languages which they speak are those of the communities in which they live. Thus, in reviving Hebrew and encouraging the Jews to speak it, the Zionists are imposing a foreign language on the communities concerned.

c) There are as many diversities in the customs and traditions of the Jews as there are different communities in which they live.

d) The Jews do not have a common history. They have lived, during the last twenty centuries, dispersed in various states. They have adopted the ways of life of the people amongst whom they have lived.

The Jews only constituted a state, in the proper sense of the term, for short periods of history. The kingdom of David and Solomon lasted only 78 years, as against four thousand years of Arab Palestine. Likewise, the two kingdoms of Judah and Israel, which succeeded the unified kingdom, had a very limited role in Jewish history. Israel was absorbed by the Assyrian Empire as far back as 722 B.C.; Judah fell into the hands of Persia in 587 B.C. The memories of these short-lived kingdoms belong more to the realm of faith and emotion than to political and social history.

Consequently, the Jews have, in fact, no common language, no common history, no common origins. The link which unites them is an exclusively religious one, not a national one, as Zionism maintains. Non-Zionist Jews acknowledge this truth.

In 1878, the Chief Rabbi of England, Herman Auler, said: "Ever since the invasion of Palestine by the Romans, the Jews have ceased to be a political community. We Jews rally politically

to the countries in which we live. We are simply, English, French, Germans. We have, of course, religious beliefs which are our own. Yet, in this case, we do not distinguish ourselves from other citizens who practise another religion. We cooperate with them for the prosperity of the country which has received us and we claim the rights and the obligations of its citizens."[7]

The American rabbi Weiss reaffirmed this concept in 1883. Jewish rabbis throughout the world have acknowledged it. In the resolution adopted by the Jewish Congress held in Pittsburg, U.S.A., in 1885, it is stated: "We Jews do not consider ourselves as a nation, but simply as a religious community. Therefore, we do not envisage the return to Palestine, nor do we wish to revive any of the laws relative to the Jewish State."

Thus, at the time when Zionism was born and being developed, ministers of the Jewish religion rejected the idea of the existence of a Jewish people united by a common nationality, and the non-Zionist Jewish Communities have continued to oppose this concept. It will be seen, therefore, that the concept of a Jewish nation, based as it is on fallacious promises, belongs historically to the same category as the myths created to serve the infamous ends of the various imperialist regimes, which have always collapsed with the regimes that created them. These myths, do, of course, succeed for a time in misleading a world opinion which has little knowledge of historical facts, which facts, moreover, have been distorted by a gigantic propaganda machine to suit its own political requirements.

Does not the same apply to Zionism's fraudulent exploitation of religious and humanitarian sentiments with the object of winning universal sympathy and deceiving world Jewry?

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[7] - *Cf.* W. Mallison Jr: "The Zionist-Israel juridical claims to constitute the Jewish people nationality entity and to confer membership in it: appraisal in public international law," *George Washington Law Review,* 1964, vol. 32, number 5, June 1964, pp. 983-1075.

[8] - Sir Edwin Montagu, Secretary of State for India, himself of Jewish faith, stated (*op. cit.*): "It is no more true to say that an English Jew and a Moorish Jew belong to the same nation than it is to say this about an English Christian and a French Christian."

3) FRAUDULENT EXPLOITATION OF RELIGIOUS AND HUMANITARIAN FEELINGS

It has been rightly said that the creation of the State of Israel could not have been more artificial and unlawful. By appealing now to religious sentiments, now to humanitarian feelings aroused by the persecutions suffered by the Jews, the partisans of the State of Israel have sought to convince people that there were solid grounds for the foundation of such a state.

In fact, however, there is no relation in international law between the creation of a State and religion or persecutions.

A. – Religious Feeling and Sovereignty Rights :

The Jews, both those converted to Judaism and those who originally came from Palestine, have, throughout the centuries, lived as minorities in various countries of the world. They have thus acquired the same rights and nationality as the other citizens of these countries. They have been able to practise their religion in freedom. But some Jewish anagogical interpreters have gone so far as to claim that the promises contained in the Holy Books gave the Jewish "people" the right to recover their sovereignty over Palestine, their "promised land." After its first congress held in Basle in 1897, the Zionist political movement strove to strengthen this religious factor so as to establish a connection between the Jews and Palestine.

This movement did all it could to combine Jewish religious concepts with Zionist political designs on Palestine. But what of the religious sentiments that attach Moslems and Christians to Palestine?

Moreover, Zionist exegesis of the Biblical texts in question is quite wrong; of course, the idea of the establishment of a state on a basis of arguments derived from the Bible is utterly unacceptable to twentieth century thinking, but were this not so, the conclusion

that it was to *the Arabs* that God promised Palestine would be unavoidable.[9]

But considerations of a religious nature have no place in contemporary international law. Sovereignty, according to this law, is based only on certain well-defined juridical and political facts such as the uninterrupted and effective exercise of sovereignty over the territory of the State.

According to the rules of international law established since the 18th century, a territory can only be subjected to the sovereignty of the occupier through actual occupation. In laying down con-

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[9] - Old and New Testament scholars have established the following facts;

a) The 4,000-year old Biblical promise ("Unto thy seed have I given this land, from the river of Egypt unto the great river, the river Euphrates") was intended for *all the descendants* of Abraham, that it to say, the *Arabs* (who claim descent through Ishmael,) as well as the Jews, who claim descent through Israel.)

b) Even more significant is the fact that, when Abraham made a covenant with God through circumcision, (Genesis XVII, 8) and all the land of Canaan was promised to him for an everlasting possession, it was *Ishmael, ancestor of the Arab tribes, who was circumcised, for Isaac had not then been born.* If, therefore, one were to follow Zionist reasoning, Palestine was "promised" by God exclusively to the Arabs.

c) In any case, the divine promises were annulled by the apostasy of the Jews.

d) The prophecy of the "Return" was fulfilled when the Jews returned to Judaea after their captivity, re-erected the walls of Jerusalem and rebuilt the Temple; the Holy Scriptures contain no mention of a "Second Return." So that the creation of Israel which is presented as the "Return after 2,000 years," *contradicts the Biblical promise on which it is allegedly based.* There are Jews in Jerusalem itself who consider that the creation of Israel, for this reason in particular, runs counter to their faith (Cf. infra, note 19);

e) The texts refer to Israel not as a geographical, ethnic or political entity, but as the universal community of believers, the *Israel of God.*

On all these questions see in particular, the work of Dr. Elmer Berger, Chief Rabbi; of Dr. Alfred Guillaume, Professor of Old Testament Studies at London University; Dr. William H. Stinespring, professor of New Testament and Semitic Studies at Duke University in North Carolina and Pastor of the Presbyterian Church, (*Zionism and the Bible*); Dr. Ovid R. Sellers, formerly Old Testament Professor, Dean of McCormick Theological Seminary, and pastor of the United Presbyterian Church; and the Very Reverend Jonathan G. Sherman, Suffragan Bishop of the Diocese of Long Island, New York; particularly in *Israel according to the Holy Scriptures,* Cedar Rapids, Ingram Press, all cited by Sami Hadawi in: "Les Revendications 'bibliques' et 'historiques' des Sionistes sur la Palestine," *Les Temps Modernes,* Paris, 1967, no. 253 bis, pp. 91-105, (op. cit.). See also Samarrai: "Palestine, Arab or Jewish?" *Arab Journal,* vol. 1, no. 2-3, Spring-Summer, 1964.

ditions for the transfer of territories from the sovereignty of one State to that of another, international law has never admitted claims based on religion. There exists no obligation to create a State for the adherents of a given faith. Civil law only requires of the citizen allegiance and loyalty to the State in which he lives, regardless of his religion. And if the Jews, like the followers of other religions, consider themselves dedicated to a specific mission, they can perfectly well fulfill that mission while retaining the nationality of the States in which they live.

B. – Persecutions and the Creation of the State of Israel :

The incredible process which has resulted in the Arab people of Palestine being obliged to pay for the persecutions of the Jews amounts to a really astounding transfer of collective responsibility. No less astonishing is the assertion that the Nazi persecutions confer on the Jewish "people" the right to live in their own State, and, to make things worse, in a country which does not belong to them.

According to this concept, it would be perfectly legal to create a special State, under whose authority the Jewish "people" could at last find the protection which had hitherto been denied them.

But this very association of the two expressions "persecution" and "creation of a State" is, from a juridical point of view, absolutely illogical. International law has never acknowledged the validity of the equation: persecution = creation of a State, and it can consider only juridical rights in judging the legitimacy or the legality of the State of Israel.

Experts in international law and international relations have severely criticised the view that political links among Jews do exist, that there is a nationality common to all Jews. These experts point out that Zionist objectives, by their very nature, go beyond the creation—illegal at that—of a Jewish State, and tend towards the establishment of a system of guarantees for the Jews

with the object of finding a solution of the problem created by the pogroms of Europe.

But the only tie which unites Jews is religion, as it is for Christians, or other believers sharing a common faith. This tie has no connection with that of nationality, which gives the right to self-determination and also permits of the creation of a State.

For it is utterly erroneous to see any connection between the alleged rights of the Jews in Palestine and self-determination. The Zionists did not liberate themselves from foreign domination but have, on the contrary, seized for themselves a country inhabited by another people. Their entire policy has been that of the expulsion of a people so that they might settle in its place.

The right to self-determination, which is the right of every people to govern itself, and freely to choose its political, economic, social and cultural future, forms an integral part of the law of nations. It is one of the declared objects of the Charter of the United Nations (Art. 1, par. 2) and it is included among the provisions of the Convention on Economic and Social Rights, adopted by the United Nations General Assembly in 1966. Recognising the right of every people to determine its own future, the World Organisation acknowledges the necessity of resorting to a referendum, or some other form of democratic consultation, before the future of hitherto non-self-governing territories is decided, out of respect for the right of every people to determine its own future.

However, it goes without saying that such a principle can only be applied in the case of a people living on its own land which it has occupied continuously and undisputedly, and not in the case of a religious community reassembled in Palestine after two thousand years of dispersion.

The application of this principle to the Palestine problem confirms the right of the Palestinian nation to independence and excludes all possibility of creating a Jewish State. Religion has, by the will of the Zionists, been transfigured into a means for the political relocation of all Jews, through the creation of the myth of a common nationality.

4) THE ZIONIST CONCEPT OF NATIONALITY

Even before Israel set up herself as a State, the *Leit-motiv* that all Jews belonged to a single nation was one of the main weapons employed by Zionist propaganda. And it has been quite easy to prove the inconsistency of this concept of a nation common to all Jews, a concept which, artificial though it is, has succeeded in catalysing the aspirations of the Jews to return to Zion. Consequently, the Zionist concept of nationality is a very peculiar one: on the one hand it rejects and condemns the integration of Jews in the various States in which they live; on the other hand it considers it perfectly normal that Jews should enjoy the advantages of dual nationality.

The uncompromisingly *imperialist character of Zionist thinking* is revealed in a collection of letters written by Dr. Elmer Berger, Executive Vice-President of the anti-Zionist American Council for Judaism. Recalling a conversation with the Israeli Consul in New York, Dr. Berger writes: "When I told him my point of view that if the Jew, no matter where he is, succeeds in integrating himself among others, the Jewish problem as such disappears... he immediately replied that this kind of integration was contrary to Israeli aims."[10]

In adopting this attitude the Israeli consul was merely reflecting the official attitude of Israel, which condemns the integration of Jews into the various communities in which they live. At the 25th World Zionist Congress which met in Jerusalem in 1961, Ben Gurion said: "Ever since the day the Jewish State was born and the doors of Israel were opened to all Jews, every one of them, if he has any religious belief at all, has committed a daily breach of the precepts of Judaism and of the Torah by remaining in the Diaspora." He called all Jews living outside Israel "impious."

In 1950 the Zionist parliament passed the "Law of the Return," which, one of the most reactionary nationality laws in the world,

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[10] - *Cf.* Revue *Al-fikr al-mu'asir* (Contemporary Thinking), Cairo, September, 1967. The letters collected by Dr. Berger date back to 1955.

is based on the narrowest racial and confessional principles. This law opens up the State of Israel to all the Jews of the world—this clearly indicated Israel's imperialistic and expansionist intentions[11]—and opens it up to Jews only[12]—which makes it possible to see the philosophy which lies behind this law in its true perspective.[13]

Israel claims rights over all the Jews of the world. Through the intermediary of the World Zionist Organisation, it imposes on them something remarkably like a tax, and also claims to control their lives and their destiny by methods which do not always respect the sovereignty of other States.

"This sort of superior right," we read in *Les Cahiers de l'Histoire,* "exercised by Israel over the Jews, explains certain disputes of a private nature, one of which, the affair of the Finaly children, was headline news about ten years ago. Born of Jewish parents

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11 - Cf. *infra, passim* and particularly pp. 41 and 75.

12 - The definition of a Jew has given rise to a number of complex problems. Every child of a *Jewish mother* or every person officially converted to Judaism is considered a Jew. But a great number of immigrants into Israel had previously contracted mixed marriages and kept a non-Jewish identity. Thus a non-Jewish woman arriving in Israel could not, according to Jewish law, hand down the quality of Jewishness (which is regarded as the basis of Israeli nationality) to her offspring, although the father was Jewish.

As regards converts, their situation is even more astonishing: "The absurdity of the Zionist claim is best illustrated in the case of the American negro actor Sammy Davis, Jr., ...who embraced Judaism some years ago. According to Zionist logic, as formulated in the Israeli *Status Law* and the *Law of the Return,* Davis is now considered to be living in 'exile' in his homeland, America, pining for the day to return 'home' to Palestine! Ironically, while a total stranger in language, colour, culture and race, can acquire the right to live in Palestine merely by adopting Judaism, the Moslem and Christian inhabitants of the Holy Land—whose physical descent from Abraham can hardly be questioned, if the 'Biblical' promises have any legitimacy in the 20th century at all—are denied the right to live in the country of their birth!" (Sami Hadawi, *op. cit.,* pp. 101-102.)

13 - *Cf. Infra,* p. 75, for the legal status of the Arabs of Palestine, particularly in matters of nationality and public liberties. The *Law of the Return* requires of the Palestinian Arabs to apply for naturalisation; failure to do this makes them *aliens in their own land,* which, in fact, is precisely what happens! Naturalisation is not granted to the Arab unless the Israeli Minister of the Interior "deems it useful," i.e. it is left to the discretion of the Minister. and is subject to conditions almost impossible to fulfil.

who were later deported and died in exile, and brought up by a Catholic family to whom they had been entrusted, the Finaly children were abducted in France and taken to Israel. In this case, personal preferences manifested by the children and family considerations were overruled by a law which requires that *every Jewish child be considered a potential Israeli.*"[14]

One is tempted to speak of dual nationality—many Americans, Germans, Poles or Russians today have links with two parties at once—one which gives them the protection of its laws and into which one would have thought they might have become integrated; the other, Israel, towards which they are attracted by feelings which receive constant encouragement. Evidence for the existence of this double allegiance is provided not only by the "*Law of the Return*" which is "a practical instrument for expansion,"[15] but also by the activity of a whole range of Zionist organisations which have Israeli legal status but operate throughout the whole world.[16]

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[14] - *Les Cahiers de l'Histoire:* "Israel et les pays arabes dans le Moyen-Orient depuis 1948," no. 70, Paris, October-November, 1967, p. 18.

[15] - *Les Cahiers de l'Histoire, op. cit.,* same page.

[16] - After the creation of the State of Israel, in which they played an extremely important part, the Jewish Agency, the Zionist Congress and the Jewish National Fund were given the status of Israeli "*national institutions.*" They became responsible for this double allegiance throughout the world by maintaining permanent contact between the Jews of the Galuth, the Diaspora, and the Israelis.

A law defining the status of the World Zionist Organization was passed by the Knesset on November 24th, 1952. It calls upon the Jewish Agency, which had built the "Jewish National Home" and, later, Israel, to continue to maintain a closely-knit, powerful and effective network of solidarity with Israel and political and financial support for the Zionist cause. On November 27, 1952, three days after the passing of this law, a pact was signed between the Israeli Government and the Jewish Agency recognising the latter as the representative organ of the Jewish world.

The Zionist Congress, which is the supreme organ, and which meets every three years in Israel, is elected by all the Jews in the world who pay the *Shekel* (registration-fee.) At present Israel holds 38% of the seats in this body, the United States 29% and the other countries of the Galuth 33%.

(On the activity of the Zionists in the United States, *cf* the publication of the U.S. Congress: "Activities of Non-Diplomatic Representatives of Foreign Principals in the United States," *Hearing before the Committee on Foreign Relations, U.S. Senate, 88th Congress, 1st Session,* Part 12, May August, 1963. Senator Fullbright presided over the U.S. Senate Enquiry Committee.)

However, it is true to say that Zionist excesses in this field have aroused reaction and resistance, and that many Jews refuse to consider themselves as being other than American, French, etc., citizens. Thus, on March 14, 1964 the American Council for Judaism, which is strongly anti-Zionist, addressed a letter to the State Department calling for a clarification of the official position of the American government in this respect. The government stated that no *legal-political relationship can arise from the religious affiliation of American Jews, who continue to be exclusively American citizens free from all allegiance as regards Israeli sovereignty.*[17]

Other statements could be cited in which Jewish personalities express their refusal to consider themselves as Israeli citizens or as members of the Jewish "people."[18]

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[17] - In his reply to the American Council for Judaism, Mr. Phillips Talbot, Assistant Secretary at the Department of State, wrote as follows:

"We have carefully studied your letter of March 14, 1964, drawing the Development of State's attention to the "*sui generis* character of the "Jewish people' concept," and urging clarification of the Department's views with respect to the "Jewish people' claim." You state: "*The central point is that the Zionist-Israeli sovereignty uses the concept of 'Jewish people' as the basic juridical claim against the Jews in states other than Israel who insist on maintaining their single nationality. Its principal function, you state, "is to change the legal status of Jews*" from that of individual nationals of Jewish religious faith to members of a juridically recognised trans-national nationality group with additional 'rights' and obligations to the Zionist-Israel sovereignty..."

"*The Department of State... does not recognise a legal-political relationship based upon the religious affiliation of American citizens... Accordingly, it should be clear that the Department of State does not regard the concept of 'the Jewish people' as a concept of international law.*" (Our italics). Facsimile of the original text of the letter, dated April 20, 1964 in W.T. Mallison, Jr.: "The Zionist-Israel Juridical Claims to Constitute 'The Jewish People' Nationality Entity and to Confer Membership in it: Appraisal in Public International Law," *The George Washington Law Review*, 1964, *op. cit.*, p. 1075.)

[18] - Following the more than pressing, not to say threatening, appeal for Jewish solidarity, made by Mr Edmond de Rothschild in June 1967, Mlle Jacqueline Hadamard, after recalling her Jewish ancestry and the sufferings endured by her family in Nazi Camps, expressed her dissent in the following words: "...*He speaks of a Jewish people which does not exist.* There are in a great many countries people of Jewish faith who have nothing else in common; or people who may have similar origins but whose ideas and philosophies are totally different, for they live integrated into the communities in which they have taken root. Such is my case... No, I do not belong to the Jewish people. *Like the majority of French Jews, I belong to the*

Recent claims by certain French Jews to double allegiance have caused great annoyance to the French Government.[19]

This wholly imperialistic Israeli concept of nationality reminds one of the famous law passed by Wilhelm II in 1914, the "Delbruck Law," which made it possible for a German to hold any other nationality he chose in addition to his German nationality.[20] It aroused so many protests that the Allied and Associated Powers inserted an article in the Treaty of Versailles obliging the Weimar Republic to rescind it.[21]

Modern public law imposes upon every citizen unconditional loyalty to the State of which he is the subject. Rightly concerned to ensure the juridical homogeneity of the State and to avoid any depersonalisation of the notion of citizenship, it admits no infringement of this rule.

Therefore, any claim to self-determination advanced by men who have no common nationality and who are united only by a common religion, must be unlawful.

The feeling, which has been so carefully nurtured despite the weakness of its scientific basis, of belonging to one people, one race, one nation, and of having the same history, the same language and the same religion, has certainly, time and space notwithstanding,

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18 - Cont'd
French people...". (Le Monde, 9-10 August, 1967.)

19 - "Certain (Jews)," writes André Fontaine, "who are totally assimilated, consider that the blood which flows in their veins does not impose on them obligations towards their cousins who live outside France, any more than the fact of having an Italian or German great-grandfather would impose obligations on an American citizen towards Italy or Germany. There are even religious Jews—they are to be found even in Jerusalem, in the Mea Shearim Quarter—who consider that the existence of a Jewish State is contrary to their faith." (André Fontaine: "La double allégeance," *Le Monde,* 11 January 1968, p. 1 and 4.

20 - Cf. The French text of the law in *Annuaire français de législation étrangère,* 1913, p. 138 et S; the English text in *The American Journal of International Law,* 1914 supplement, p. 217 ets., the German text in *Reichgesetzblatt,* 1913, no. 46, p. 583 et s. For comments on this law, see Haenning: "Une fourberie allemande, la loi Delbruck," *Revue du droit international privé,* 1913, p. 971 and D.J. Hill: "Dual Citizenship in the German Imperial and State Citizenship," *American Journal of International Law,* 1918, p. 356.

21 - *Treaty of Versailles,* Article 278.

served as a cement in building the Zionist structure and in giving its aims a concrete form. But now that the objective has been attained and this feeling has fulfilled its socio-political purpose, Zionism practically admits that the secular *Leit-motivs* it has employed to unify the Diaspora have disregarded historical and scientific truth: *"What binds the Jews together," says David Ben Gurion, "is not religion, because the Zionist Movement includes atheists as well as pious elements, nor race, which has vanished after so much dispersion, nor language, since Hebrew almost died out for several centuries and since the majority of world Jewry does not know it and cannot speak it. The real bond which unites Jews throughout the whole world is their faith in a return to Israel."*

This statement, though belated, has the merit of being frank and completely refutes Zionist "historical rights" based on myths. It also has the virtue of attracting attention once again to the essential nature and the real objectives of Zionism, which cannot hope to bring the 14 million Jews of the world to Palestine revealing its essentially expansionist and colonial character.

II. — ISRAEL, A COLONIAL PHENOMENON

Israel is the most recent creation of the European colonialism and expansionism of the 19th and 20th centuries. It is perhaps not the purest nor the most perfect of such creations, because many political experts of good faith would hesitate to label the Israeli phenomenon as colonialist. But a study of the objective elements which have accompanied the birth of Israel, and of the condition of the Arab minority in the country, leaves no room for doubt. The creation of Israel is the outcome of a colonial process and Israel's anti-Arab racialism is an integral part of colonialist thinking.

1) THE CREATION OF ISRAEL, OUTCOME OF A COLONIAL PROCESS

Certain definitions of colonialism give an accurate description of the vicissitudes experienced by Palestine, its partition and the creation of the Jewish State. A colony is an "assemblage of persons

leaving their country to people another," or "the colony is a foreign country, generally subjugated by right of conquest, and placed under the political and economic protection of the conqueror." But the definition provided by the sociologist,[22] more comprehensive than that of the dictionary, gives the essence of the colonial phenomenon in one sentence: "One can speak of colonisation when there is occupation with domination, and emigration with legislation." If we accept this lucid definition the Israeli phenomenon is certainly a colonial phenomenon, even though the traditional picture of life in Israel, as depicted by skilful propaganda, bears little relation to one's usual idea of colonialism.

It is certainly difficult to believe that these "dignified Arabs of Israel shown in government publications solemnly casting their votes in the democratic ballot box" are really the victims of colonialism, or that "the kibbutznik, with his pure innocent face, radiant with idealism, working with his hands on the land once trodden by the feet of Solomon, Isaiah and Jesus, the long degradation of his ancestors in the ghetto now a thing of the past,"[23] is really a colonialist.

But colonialism is not an entity with precisely defined outlines; the student of social sciences will agree with M. Rodinson when he says that: "All are agreed on the essential, the nucleus; ...but at the periphery, there is no clear definition, with the result that the terminology employed differs widely as between groups, schools of thought and even individuals." Here we intend to concentrate on three facts that clearly demonstrate that the creation of Israel must take its place in the long series of colonial phenomena.

These facts are a) that Zionism is a movement inspired by colonialism; b) that it is related to European expansionism; c) that the progressive settlement of Palestine was achieved by colonisation; and, finally, that colonial settlement in Palestine has been able to develop and grew only at the expense of the Arab population.

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22 - René Maunier: *Sociologie coloniale,* Paris, 1932, p. 37.

23 - Maxime Rodinson: "Israel fait colonial?," *Les Temps Modernes, op. cit.,* p. 23.

A. – Zionism and Colonialism

Zionism is a philosophy; it is also an ensemble of means and techniques designed to enable it to attain its objectives.

The modern Zionist movement, initiated by Theodor Herzl's "*The Jewish State*," published in 1896, is resolutely colonialist. The founder of Zionism had one essential aim: to create a Jewish State. At first he suggested either Argentina or the Holy Land as alternative locations for the future State. But it was not long before he came out in favour of Palestine, and this was the choice of the first Zionist Congress, held in Basle in 1897. The objective declared by this first Congress was the creation in Palestine of a Jewish homeland guaranteed by public law, and one of the means to be employed was the "rational colonisation of Palestine by the settlement of Jewish farmers, artisans and industrialists."[24]

Further means proposed by the Congress included "organising and associating all Jews through the agency of local associations and general federations, to the extent allowed by the laws of the country in which such associations are established, strengthening the feeling of personal dignity and the national consciousness of the Jewish people," and "taking first steps towards securing the consent of governments, which is necessary for the achievement of the aim of Zionism."

The Basle programme was not implemented immediately, one reason being that Zionist opinion was divided when it became known that on August 17, 1903 the British Government had offered Herzl a territory in British East Africa.

The VIth Zionist Congress (1903) was allotted the task of deciding between Palestine and Uganda. With this end in view it appointed a committee to examine the possibility of settling Jewish settlers in the British territory.

This committee having decided against Uganda, the VIth Congress witnessed the triumph of Zione-Zion (these in favour of the choice of Palestine) and adopted the following very significant

[24] - *Cf.* Bernfeld: *op. cit.*, p. 341.

motion: "The Zionist Organisation stands firmly by the fundamental principle of the Basle programme, namely, 'the creation of a homeland guaranteed by public law for the Jewish people in Palestine,' and rejects both as an aim and as a means, every *colonising* action outside Palestine *and the neighbouring countries.*"

Thus the Zionist Congress frankly proclaimed the principle of colonising action in Palestine and of expansionism in the direction of the neighbouring territories, a fact which throws a glaring light on recent events.

Zionist claims were subsequently clarified and confirmed. The geographical ambitions of Zionism were defined in a memorandum submitted by the World Organisation to the Versailles Peace Conference in Versailles on February 3, 1919. In this memorandum the Zionists demarcated the frontiers of the State which they desired to create. "These frontiers comprised territories which today belong to Arab countries such as southern Lebanon, the east and west banks of the Jordan, a part of the northern Hejaz and all the Sinai peninsula. Ever since its creation, Israel has been striking stealthy blows at the neighbouring Arab countries in the hope of conquering not only these territories but others as well."[25]

Herzl himself specified what the geographical configuration of the future State was to be. "For our future trade we must be located on the sea, and for our large-scale modern agriculture we must have a large area of land."[26] "Our slogan should be: the Palestine of David and of Solomon."[27] "The area: 'from the river of Egypt to the Euphrate'."[28]

But it was quite obvious that a doctrine so clearly stated could not prevail without logistic assistance derived from the financial solidarity of Zionists throughout the world.

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25 - Burhan Dajani: "Les risques d'explosion du problème palestinien," *Les Temps Modernes, op. cit.*, p. 136.

26 - *The Complete Diaries of Theodor Herzl,* Raphael Patay, English translation by Harry Zohen, Herzl Press and Thomas Yassilov, Part one, p. 133.

27 - *ibid,* p. 432.

28 - *ibid,* Part II, p. 711.

The creation of the *Jewish National Fund* by the VIth Zionist Congress in 1901 was, according to its promoters, intended to secure the purchase of lands in Palestine, which were to remain the inalienable property of the Jewish people. Moreover, in 1899, the IInd Congress had decided to establish the *Jewish Colonial Bank,* a limited company with headquarters in London, having a capital of two million pounds sterling. But, as Mr. Bernfeld has so aptly remarked,[29] the Jewish Colonial Bank, "although created as an ordinary bank to deal in credit operations, and to stimulate agriculture, commerce and industry in Palestine, and in the Orient, nevertheless *pursued an essentially political aim.*"

In fact it was considered by its promoters, such as Dr. Bodenheimer, as the "most appropriate organ to enter into negotiations with the Turkish Government for the concession and purchase of lands." Herzl stated that the negotiations between the Bank and the Turkish Government were to have as their objective "the acquisition of a large concession with all the sovereign rights which are customarily granted to *Charter Companies.*" In the eyes of the Zionists, the Turkish charter (or concession) was to be the prelude to a European Charter embodying guarantees by public international law.

The Jewish Colonial Bank was conceived as a political instrument to ensure the creation of a legally guaranteed homeland.

With the whole arsenal of ideological, economic and juridical weapons at the ready, all that remained to be done was to secure the active cooperation of the Great Powers. The skill of Zionism lay in the way it integrated the means at its disposal with European expansionism.

B. – Zionism and European Expansionism

At the time when Herzl and his friends made their definite choice of Palestine as the place where the future Jewish State was to be planted, the consent of the Great Powers was indispensable, if such a vast political plan was to have any chance of success. Herzl, who played a decisive role in the creation of Zionism and in its

[29] - Bernfeld: *op. cit.,* p. 415 (our italics.)

subsequent orientation, was well aware of the strength the Zionist cause could derive from the approval of the principal European Powers, and realised that their active interest in that cause was the *sine qua non* of its triumph.

As it turned out, each partner was only too ready to help the other—an immoral alliance if ever there was one—with Zionism placing all its hopes and all its power of influencing others in the support which it was to offer to, and to receive from, European States in the process of expansion; while the latter, realising how important the establishment of a Jewish State could be for the defence and security of their spheres of influence, decided to help and support Zionism. Should one call it a contract, this deal without a name, concluded at the cost of the freedom of the Palestinian people, to the exclusive benefit of the Zionists and their associates?

There can be no doubt that the Zionist leaders were aware that an exceptional opportunity would be offered them if they could get their movement adopted by the European imperialisms which, with their power of expansion, were in a better position to ensure its rapid and complete success. Herzl put it in simple words: "If His Majesty the Sultan gave us Palestine we could undertake to put the finances of Turkey in order. For Europe, we should form part of its bulwark against Asia; we should be the advance guard of civilisations against barbarism. As a neutral State, we should keep in constant touch with all Europe, which would have to guarantee our existence."[30]

We may note in passing the casual effrontery with which certain values, that all civilisation regard as essential, are reduced to the level of merchandise. In June 1896 Sultan Abdul-Hamid gave Herzl the answer he deserved: "The Turkish Empire does not belong to me but to the Turkish people. I cannot give away any part of it. Let the Jews spare their millions. When my Empire is divided up they can have Palestine for nothing. But it will only be our dead body which is cut up; I shall never agree to vivisection."[31]

30 - Herzl: *L'Etat Juif*, Paris, 1926, p. 95.
31 - Quoted by Rodinson, *op. cit.*, p. 38.

Zionism not only agreed, but actually requested to act as the privileged instrument of European imperialistic policy, in return for the grant of Palestine to the Jews. For such, indeed, were the conditions. A study of the history of the Zionist movement reveals that Zionism's first and only preoccupation was to build a State, a homeland guaranteed by public law. It was never content with creating a Jewish spiritual centre or scattered agricultural colonies, of which Herzl said that they were a method inspired by "the erroneous principle of progressive infiltration:" "Infiltration is bound to come to a bad end, for the moment will surely come when the government, at the request of the population which feels itself threatened, will stop further Jewish immigration. Consequently, emigration has really no *raison d'être* unless it is based on our guaranteed *sovereignty. The Society of Jews* will negotiate with the sovereign authorities of the territories in question, under the protection of European Powers, should this be agreeable to them."[32]

Aware of the rapid decline of "The Sick Man," these powers had begun, in the Sykes-Picot Agreement of 1916, to carve out spheres of influence for themselves in the Middle East, and made provision for an international administration in Palestine. But this agreement, concluded to control Anglo-Franco-Russian competition in this part of the world, was soon made obsolete by the triumph of the Bolshevik Revolution in 1917.

Great Britain took the lead in a spectacular manner, with the Balfour Declaration. This letter, addressed by Lord Balfour, British Secretary of State for Foreign Affairs, to Lord Rothschild, contained the following words: "His Majesty's Government view with favour the establishment in Palestine of a national home for the Jewish people, and will use its best endeavours to facilitate the achievement of this object, it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status of Jews in any other country."

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[32] - Quoted by Rodinson, *op. cit.*, p. 32.
[33] - *Cf.* Dr. Jacques Khoury: *La Palestine devant le monde,* 1953, p. 9.

One is struck immediately, before one grasps the exact meaning of this paragraph, by the surprising expression used to designate the Arabs of Palestine ("the non-Jewish communities"). Taken literally, it means that Palestine is regarded as a Jewish country, and all its inhabitants other than Jews as aliens or immigrants! It suggests that a country can, paradoxically, take the name of its alien minority rather than that of the majority of its native inhabitants! And yet, at the time of the Balfour Declaration, the Arabs formed 92% of the population of Palestine.

It should be emphasised at the outset that British support in the matter was decisive—not that the support of the other Great Powers was by any means negligible. In general, reference is made only to the Balfour Declaration of November 2, 1917, whereas in reality the Zionist movement payed particular attention to securing identical declarations from other Great Powers.[34] But the fact remains that it was Great Britain which was to take up the Zionist Cause most enthusiastically and this fully explains the notoriety of the Balfour Declaration, a notoriety it retains to this day. The British War Cabinet received a note from Weizmann which read as follows: "In submitting our resolution we have entrusted our national and Zionist destiny to the Foreign Office and the Imperial War Cabinet, in the hope that the problem would be considered in the light of *imperial* interests and the principles for which the Entente stands."[35]

By agreeing, in the middle of the war, to support Zionist ambitions, and to subscribe to this peculiar interpretation of history,

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[34] - *Cf.,* for example the letter addressed on June 4, 1917 (prior to the British Declaration) to Sokolow by Jules Cambon, Secretary General of the French Ministry of Foreign Affairs; the letter of February 14, 1918 from Stephen Pichon, French Minister of Foreign Affairs, to Nahum Sokolow; the letter to the same addressed on May 9, 1918 by the Italian Ambassador in Paris in the name of Baron Sonnino, Italian Minister of Foreign Affairs; the letter of August 31, 1918 from United States President Wilson to Rabbi Stephen Wise, Zionist representative. In these documents France, Italy and the United States take upon themselves the obligations of Lord Balfour. They are published in the doctorate thesis of Bernfeld on *Le Sionisme, op. cit.,* pp. 17-20.

[35] - Weizmann: *Trial and Error,* London, East and West Library, 1950, p. 258.

which recognises Palestine as a Jewish land, Great Britain showed her lively interest in controlling the future of the Middle East. In this she was only following one of the established principles of her foreign policy. In a report he wrote as early as 1840, (well before the birth of Zionism) Lord Shaftesbury recommended that the Asiatic part of the Arab world be separated from the African part by the establishment of a British-protected State between them. Similarly, a memorandum addressed to Palmerston, British Minister for Foreign Affairs, on September 25, 1840, contained a plan for the colonisation of Palestine. The British consulate established in Jerusalem in 1838 (the first Western consulate to be opened in the Holy City) included the Jews among those subject to its jurisdiction, and put them under its protection.

Again, well before the Balfour Declaration, in letters dating back to August, 1840, and February, 1841, Palmerston instructed his ambassador in Turkey to promote the settlement of Jews in Palestine, with the object of thwarting any attempt by Mohammed Ali to achieve the union of Egypt with Syria.[36]

Almost a century later, it was the Zionist leaders, under Weizmann, who asked Great Britain to exercise a protectorate over the future Jewish State.[37] France, meanwhile, through George Picot, had unsuccessfully claimed a protectorate over the same area, Palestine, a claim which was rejected by the Zionist leaders.[38] Great Britain accepted this role because she saw in Zionism a means for implementing her imperial plans. There were many obvious reasons for her

[36] - *Cf.* Hamed Sultan: *Secondary Juridical Aspects of the Palestine Question,* Cairo, 1967, pp. 76-77 (in Arabic). "This *'entente cordiale'* between imperialism and Zionism," writes the author, "is not a new phenomenon. It existed before the birth of official Zionism. Imperialism has always looked upon the creation of a Jewish State in the Middle East as a means of preventing the rebirth of Arab nationalism, which it considered hostile to its interests in the region. When Mohammed Ali, Pasha of Egypt, entered into conflict with the Ottoman Sultan and considered the creation of an independent Arab State which would include all the Arabic-speaking Ottoman provinces, Great Britain, seeing the plan taking concrete shape, recommended the colonisation of Palestine by the Jews of Europe as a means of counteracting nascent pan-Arabism."

[37] - Weizmann: *op. cit.,* p. 243.

[38] - Weizmann: *op. cit.,* p. 240.

attitude. The moving of a pawn into the heart of the Ottoman Empire, made impossible the achievement of the Egyptian-Syrian unity envisaged by Mohammed Ali. Nor was Great Britain averse to acquiring a reliable base on the route to India by establishing there a State whose population would be well aware of the debt it owed to Great Britain. This point of view was described by the great historian Harold Temperley, in his *History of the Peace Conferences.*[39] "Great Britain" he says, "had special motives which prompted her to adopt the policy she followed in Palestine. These motives become obvious when one stops to consider the advantage of covering the Suez Canal from the East by a country whose population well knew how much help they had received from Great Britain and whose interest it was to retain that help, quite apart from the support it was certain to receive from Jews the world over."

One further observation must be made. The establishment of a protective glacis to the east of the Suez Canal was all the more necessary for Great Britain in view of her realisation that she would have to counter-balance the influence exercised by her importunate ally, France, to whom something would have to be given, either in Lebanon or in Syria.

Once the victory of the Allies was secured, it remained only to implement the Balfour Declaration, a deliberately ambiguous document, since it referred to a "Jewish national home," which did not fit into any precise juridical category. It was most desirable to maintain this obscurity about Anglo-Zionist intentions to avoid alarming the Hashemite dynasty, to which Great Britain had pledged its support. But it was not difficult to prophecy, as did Golda Meir on August 21, 1921: "It is not the Arabs the English will choose to colonise Palestine, it is us."[40]

Meanwhile, the important thing was not to provoke an armed uprising by speaking of a Jewish State at a time when people were beginning to become aware of something which had hitherto been ignored by everyone, the Arab National Movement. Even the Zionists

[39] - Harold Temperley: *History of the Peace Conferences,* Vol. IV, p. 171.
[40] - Cf., Mary Syrkin: *Golda Meir,* Paris, Gallimard, 1966, p. 63.

were displeased to hear Tardieu announce, before the Council of Ten in February, 1919, that France would oppose neither the placing of Palestine under British trusteeship nor the formation of a Jewish State. Weizmann was to write later: We ourselves had refrained from using them."[41] (i.e. these words).

Both British and Zionists had to advance surreptitiously by proclaiming to the world something totally different from what they had in mind, and on which they were in entire agreement. Hence the *White Paper*, or Churchill Memorandum, of June 3, 1922 which endeavoured to minimise the significance of the Balfour Declaration in order to forestall the recurrence of violent Arab reactions: "Phrases have been used such as that Palestine is to become 'as Jewish as England in English.' His Majesty's Governments regard any such expectation as impracticable and have no such aim in view... The terms of the Declaration (Balfour) referred to do not contemplate that Palestine as a whole should be converted into a Jewish National Home, but that such a home should be founded in Palestine... Nor have they at any time contemplated... the disappearance or the subordination of the Arabic population, language, or culture in Palestine."[42]

It was with the formal consent of the Zionists to such an interpretation of the Balfour Declaration—an interpretation which excluded a Jewish State—that the draft Mandate was submitted to the League of Nations. This Mandate, which was granted to Great Britain on July 24, 1922 embodied the Balfour Declaration.

At this stage of the historical evolution of the Palestine question, one cannot but subscribe to the conclusion of M. Rodinson's well-documented and subtle analysis. "The Arabs had every right to regard the implantation of a new foreign element in the land of Palestine (an element which, at that time, was mainly European) as having been imposed on them by a European Power, thanks to the victory of a group of European Powers over another group to which

41 - Weizmann, *opp. cit.*, p. 306.
42 - Quoted by Rodinson: *op. cit.*, p. 50.

the Ottoman Empire had attached itself."[43]

The Zionist leaders had good reason to believe that the Mandate over Palestine, inasmuch as it embodied the terms of the Declaration, was the ideal platform from which they could feed and control the current of immigration with a view to forming a majority Jewish population which would, eventually, lead to the emergence of a Jewish State. Officially, at any rate, there was no further mention of such a State, but the idea of creating it remained the driving force of the Zionist Organisation.

Subsequently, the close alliance between the Zionists and the British, undermined by increasingly serious differences, turned into open hostility. This was an illustration of the classical phenomenon of tension between a mother country and its colony, such as existed between France and the European settlers in Algeria. Great Britain, which had, by force of circumstances, played the role of the mother country, in protecting the Jewish colonisation of Palestine, came increasingly into collision with the Jewish colonisers. Concern for her interests led her to be more tactful in her dealings with the Arabs and to favour the Zionist cause less and less. *Such was the case with the White Paper published in 1939.* The dispute between the Zionists and the British later degenerated into actual armed conflict.

Then, when the United Nations adopted its Partition Plan, and Great Britain decided to withdraw her troops from Palestine on May 15, 1948, the Israel-Arab confrontation became inevitable, as the Arab countries could not accept the United Nations decision.[44]

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[43] - M. Rodinson: *op. cit.*, p. 46.

[44] - One must understand, as did M. Rodinson, what were the feelings of the Arabs at that time, when thirty years of a policy of slow erosion, authorised by the Balfour Declaration, culminated in the dismantling of their country. "Europe had collectively sent colonisers whose objective was to seize part of the national territory. At a time when the Palestinian Arabs themselves could easily have thrown out these colonisers, they were prevented from doing so by the nations of Europe, together with America, acting in concert. The Arabs had already been morally disarmed by the false assurance that all that was intended was the peaceful settlement of a few unfortunate and harmless groups of people who were to remain in the minority. Then, when the real designs of these groups came out into the open, when the

In short, the development of the political phenomena can be summed up in a series of observations that admit of no doubt whatsoever.

The ideological Zionist Movement was of European origin. The success of Zionism was due to the Balfour Declaration, a British political act given decisive importance by the victory and the subsequent approval of the Allies. The first Arab-Israeli war of 1948 brought to the fore the Jewish community, settled in Palestine and supported by all the European-American nations, and especially by Europe, which was happy to rid itself of unwanted elements.

From this general phenomenon of expansion by European countries into the under-developed world, Zionism has advanced to establish in it a sort of economic and political condominium based on the sacrifice of the legitimate rights of the native Arab population. What does it signify, as far as the Arab population is concerned, if Israel is a socialist State, when its creation was the result of fraud and force? And even if it is socialist, *it certainly remains a bridgehead for the capitalist world in the heart of the underdeveloped world. The connecting link between its Zionist origin and its present role is only too obvious. As a result of Zionism's initial choice Israel is the ally of the capitalist Powers.*

At the beginning, as well as at the present stage of the evolution of Israel, we find capitalism and imperialism, and between then and now there has been Jewish settlement, which is a colonial phenomenon, a colonial act.

([44] - Cont'd)
collective power they had slowly built up under the protection of the Mandate was disclosed, the European-American world, united despite its internal differences, from the socialist USSR to the ultra-capitalist U.S.A., wanted to force the Arabs to submit passively to the *fait accompli.* In the eyes of the Arabs, the conclusion of the Second World War brought a bitter repetition of the end of the First." After this lucid analysis of the responsibilities incurred by the Great Powers, M. Rodinson writes: "Did not the 1922 Mandate itself stipulate that 'nothing shall be done which prejudice the rights and the position of the other sections of the population?" And did not the American Presidents Roosevelt and Truman promise, in letters to Ibn Saud on April 5, 1945 and October 28, 1946, not to take any decision without 'full consultation' of Arabs and Jews, and to decide nothing which would be contrary to Arab interests?" (Maxime Rodinson, *op. cit.* pp. 60-61.)

C. – Jewish Settlement in Palestine

Everything has happened as though Palestine was an uninhabited land, as though the Arabs who lived in it would be indifferent to the occupation of their land. But, as Neville Mandel has remarked,[45] contrary to the view generally held, Arab resistance to Jewish colonisation began well before the 1914 War. Arab nationalism had been opposed to Zionist colonisation since 1850. The first immigrants bothered their heads but little about the Arabs of Palestine, such dealings as they had being with the Ottoman authorities who governed Palestine at that time.

It is in the light of these considerations that Jewish immigration into Palestine must be described.

a) The first wave of immigrants (the first *aliya)* covers the period that ended in 1917. By 1914 there were probably some 85,000 Jews living in Palestine. (This figure fell to 56,000 during the First World War.)

It was, therefore, essential for the Zionists, after the Allied victory, to make sure that the minority Jewish population of Palestine increased rapidly.

b) There followed a second period, which ended with the creation of the State of Israel. In 1920, the Jewish Agency was authorised to bring into Palestine 16,500 immigrants per year, and by 1922 the proportion of Jews to the other inhabitants of Palestine was 11%. However, this percentage was to increase rapidly, totalling 17.7% in 1931 and 28% in 1936, the annual quotas having been considerably exceeded as a result of clandestine immigration. The Simpson Report of June 20, 1930, highlighted the importance of the so-called "tourist" phenomenon and recalled that in 1925, 33,800 immigrants had settled in Palestine. It held the Jewish Agency responsible for these violations of the immigration law, violations which it was impossible to check once the clandestine immigrants were settled in Palestine. The same Report also noted the consequen-

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45 - Neville Mandel: *Turks, Arabs, and Jewish Immigration into Palestine, 1882-1914,* London, 1965, pp. 77 to 108.

ces to employment of this uncontrolled immigration, which resulted in unemployment among Arab workers. Simpson concluded that it was essential either to stop or control this influx, so as to prevent a further deterioration in the living conditions of the native population. Similar concern had been expressed in the 1922 *White Paper,* or Churchill Memorandum, mentioned above, which stated that immigration would be limited by the "economic capacity of the country to absorb new arrivals."

The second *White Paper,* issued in 1930, after the Simpson Report, again limited immigration. But these restrictions, as MacDonald assured Weizmann in a letter dated 13 February 1931, were not to be considered as a reversal of previous policy.

Whatever the intentions expressed, the undeniable fact remained that five years after the publication of the White Paper, 143,000 immigrants had entered Palestine. The Mandatory Power was either unable or unwilling to stem this tide, which had been swollen by the first racialist measures taken by the Hitler regime.

In 1939, the attitude of Great Britain underwent a change, as a result of her increasing awareness of Arab opposition to the creation of a Jewish State. The White Paper of May 17, 1939 proposed the establishment, within a period of ten years, of an independent Palestinian State in which not more than one third of the population would be Jews. To attain this objective, the British document stipulated that Jewish immigration was to be restricted to a total of 75,000 over the five years following its publication, and that thereafter "no further immigration was to be allowed unless the Arabs of Palestine are prepared to acquiesce in it." Finally, it stipulated that the number of clandestine, or illegal, immigrants would be deducted from the fixed quota.

The above measures, as well as the following excerpt from the White Paper, reflect a change in the British attitude: "His Majesty's Government sees nothing, either in the Mandate or in subsequent statements, which corroborates the view that the establishment of a Jewish National Home in Palestine could not be achieved unless immigration were allowed to continue indefinitely."

Once again, the quotas fixed by the White Paper were exceeded, and the Jewish population of Palestine continued to increase. At the end of 1943, the Jews numbered 539,000 out of a total population of 1,676,000, or 32%.

c) With the creation of Israel, a third phase opens. From 1949 to 1954, the number of Jews rose from 758,000 to 1,500,000, and reached 1,800,000 in 1958. Thus were fulfilled the hopes of the Zionist Organisation of America which, in its meeting at the Biltmore Hotel in New York on May 11, 1942, had demanded unrestricted immigration under the sole control of the Jewish Agency.

The State of Israel had made immigration a cornerstone of its policy. As early as 1950, the famous Law of the Return, passed on July 5 of that year,[46] contained a pressing appeal to all Jews, every one of whom, no matter where he lives, has the right to come to the country as an immigrant. Israeli policy of populating Palestine with Jewish immigrants was given concrete form in this law, which has proved a useful instrument in the service of Israeli expansionism. "The Arab States neighbouring on Israel," we read in *Les Cahiers de l'Histoire,* "have constantly feared that *immigration was the basis of an endless process of correlation, with the Jews demands for lands to settle their immigrants geared to their bringing in immigrants in order to be able to claim more lands... The Arabs were therefore justified in looking on the creation of the State of Israel not as the beginning of an era of stability, but as the starting point of an expansion, the only object of which, according to the Israelis themselves, was the ingathering of the Diaspora.*"[47]

The concentration of Jews on Palestinian soil which, during the past 25 years, has been going on at a rapid pace, significant enough in itself because of its colonial nature, acquires an even greater significance when one realises that it must inevitably be accompanied by the progressive dispossession of the Arabs.

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[46] - *Cf. supra.* pp. 38 and 40 and *infra.* p. 65.

[47] - *Les Cahiers de l'Histoire: op. cit.,* p. 18.

D. – Progressive Dispossession of the Arabs

To understand and appreciate the methods followed by Israel in the acquisition of land, we must divide the operation into two stages: a first, which begins with the first attempts at colonisation and ends in 1948; and a second, from 1948 up to the present day, which has been characterised by the policy followed by Israel.

a) *Until* 1948, the Zionist Organisation's land-acquisition policy in Palestine was implemented in an ostensibly regular manner.

The Jewish National Fund created in 1907, which was supported by the Jewish Colonial Bank, acquired lands by purchase from their Arab owners. On this basis, an attempt has been made to establish the legitimacy of Jewish settlement in Palestine and to justify the fact that in 1930 the Jews owned 1,170,000 dunums, as against 400,000 in 1914.

But colonisation is not necessarily accompanied by the brutal procedure of confiscation. Very often the colonial phenomenon of land acquisition has evolved within the strictly regular framework of a mutual contract. But it must be remembered that the alien coloniser is, in fact, in a privileged position; there is a whole series of shifts, tricks, and administrative facilities which make it easy for him, at small cost to himself, to extend his domains at the expense of the native. The history of French colonisation in Tunisia[48] and in Algeria[49] provides excellent illustrations of such ostensibly legal practices.

Indeed, an analysis of colonial history shows that settlers have usually acquired lands by purchase, confiscation being rarely resorted to. Yet, nobody could maintain that such transactions are not in fact colonial phenomena.

These general remarks were necessary in order to place the policy of the purchase of Arab lands in Palestine in its true context, i.e., the context of colonialism. Add to this the evidence provided

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48 - Paul Sebag: *La Tunisie, essai de monographie,* Paris, 1951, p. 36 sqq.

49 - *Cf.,* F. Borella: "Le droit public économique algérien," *Revue algérienne des sciences juridiques, économiques et politiques,* 1966, p. 513.

by Zionist practice, and the true dimensions of the Israeli colonial phenomenon will be clearly seen.

The inalienability of Jewish lands is asserted by the Constitution of the Jewish Agency (Article 2), which, adopted in Zurich on August 14, 1929, also includes provisions intended to consolidate and extend the Jewish nature of such appropriation. Paragraph 5 stipulates that only a Jew can work on Jewish land, those who employ non-Jewish labour being liable to a fine.

However, this embargo on the employment of Arab labour in the development of Jewish lands must not be used as an argument in support of the claim that Israeli settlement in Palestine is of a non-colonial nature. Here, again, direct exploitation of the native is not an inevitable and invariable feature of the colonial phenomenon. In America, India, New Zealand and Australia, the English did not, strictly speaking, exploit the native population by employing local manpower, yet British expansionism was certainly a colonial phenomenon.

According to the Simpson Report of June 20, 1930, Jewish colonisation of Palestine had by then resulted in 29% of Arab families being dispossessed of their lands. As a result, the Mandatory Power started concerning itself, somewhat late in the day, with the transfer of lands. After the publication of the *White Paper* of 1939, the *"Land Transfer Regulations Act"* divided the country into three zones:

— Zone A, (4 million acres, 63% of the total area) in which the transfer of Arab lands to Jews was forbidden.
— Zone B, (2 million acres, 32% of the total area) in which the purchase of lands by Jews was permissible under certain conditions.
— Free Zone (332,000 acres, 5% of the total area) where the purchase of land was unrestricted.

The area of Jewish lands has increased continuously: it totalled 928 square kilometres in Mandatory Palestine in 1941, and reached 3,240 square kilometres in 1961. The period of the British Mandate was particularly propitious to the extension of Zionist landholding:

at the beginning of the Mandate, Zionist-held lands totalled 650,000 dunums but increased to 2,075,000 dunums towards the end of the Mandate.[50] The rate of increase was extremely high after 1948.

b) In fact it was with the creation of Israel that the first of a series of measures was taken, all of which were designed to secure the rapid dispossession of Arabs. With these measures, we pass from the stage of "acquisition to that of confiscation."[51]

No sooner had the 1948 war ended, than Arab lands close to the frontier (Upper Galilee, the Arab region of the central part of Israel, and the zone adjacent to the Gaza Strip) were placed under military government. In these areas the military authorities applied the *Absentees' Property Law* in such a manner that a general redistribution of lands was effected in favour of the Jews, particularly in upper Galilee. Emergency military regulations traced boundaries so arbitrarily that owners of lands within these limits could not enter them without permission from the military authorities. Or, "having ordered the Arabs to live in their villages, which made it impossible for them to cultivate distant properties, the military authorities carried out by decree land transfers which were often to the disadvantage of the Arabs."[52]

A similar summary procedure was established at that time to enable the civil authorities arbitrarily to declare any Arab town or village an "abandoned area." As a result of a 1948 regulation, many Arabs were considered as absentees and their properties regarded as abandoned properties, although in fact they had never left Israel.

The law of March 10, 1953 which replaced this emergency regulation, stated that all land reserved, seized, distributed or put to use since May 14, 1948, in order to ensure the needs of vital

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50 - *La politique internationale,* Cairo, October 1967, p. 153 (Al Ahram edition).

51 - For all these questions, see W. Schwarz: *The Arabs in Israel,* London, 1959, p. 96; Don Peretz: *Israel and the Palestine Arabs,* Washington, The Middle East Institute, 1958, p. 152. See also "Les Arabes en Israël," in *Les Temps Modernes, op. cit.,* p. 792 sqq.

52 - *Cf. Les Cahiers de l'Histoire, op. cit.,* p. 24 sqq.

development, settlement or security, and neglected by its titular owner, was declared to be the property of the Development Authority. By virtue of this law and other laws which preceded it, 16,000 hectares of land belonging to the Arab minority were confiscated. The central committee of the courageous little group called *Ihud* protested against this Land Acquisition Law "which really means the theft of lands owned by inhabitants of the State. They are farmers like you. They are citizens of Israel like you. There is only one difference between them and you: they are Arabs and you are Jews." No land belonging to Jews has been "acquired" by virtue of the provisions of this law of 1953, which is all the more iniquitous in that the compensation it envisaged was based on land prices in 1950, and this, in effect, meant that those whose lands were expropriated were compensated at a ridiculously low rate.

The so-called *Law of Limitations,* of 1958, stipulated that landowners desiring to register their lands had to prove possession for twenty years, not only ten years as previously. Thus Arab landowners who had failed to claim their property deeds under the old legislation, were unable to apply for the registration of their lands in their name.

This racialist legislation, which resulted in the spoliation of what remained of the native population, inevitably invites comparison with legislation in the Union of South Africa. There, legislation has progressively prohibited Africans from acquiring real estate, and through the Group *Areas Act* of 1950, has dealt a final blow to all forms of landholding by Africans.

The above should have been sufficient to reveal the anti-Arab racialism of the State of Israel. Let us now examine the subject in greater detail.

2) THE ANTI-ARAB RACIALISM OF ISRAEL IN COLONIAL THINKING

As Rodinson has so pertinently remarked:[53] "The idea of

[53] - Rodinson: *op. cit.,* p. 68.

creating a purely, or predominantly Jewish State in Arab Palestine in the 20th century, could only lead to a colonial-type situation, with the development of a *racialist* mentality and, finally, to a military confrontation of the two ethnic groups."

In fact, anti-Arab racialism has been institutionalised to the extent of becoming one of the distinguishing characteristics of Israeli legislation, in the same way that anti-black racialism predominates in the legislation of the South African Union.

A) In the field of political rights and liberties the discrimination, as regards citizenship and nationality, is fundamental, because it is a discrimination based on religion.

The *Law of the Return* of July 5, 1950,[54] according to which "every Jew has the right to come to this country as an immigrant," should be compared with the Nationality Law of 1952, Article 2 of which stipulates that "every immigrant, within the meaning of the Law of the Return, shall become an Israeli."

Thus, acquisition of Israeli nationality is subordinated to the quality of being a Jew, a matter which constitutes a discriminatory practice resulting in the refusal of the benefits of such nationality to Arabs, whether they be Christians or Moslems.[55] In other words, the *Law of the Return* is a naturalisation law applicable exclusively to Jews.

But private international law on naturalisation has different rules in this respect. It does acknowledge that every State has discretionary competence in this matter, but insists that certain basic rules must be applied. These cover such matters as a medical examination, good character, and a longer or shorter probationary period; the law also generally stipulates a minimum age for applicants for naturalisation. But, in the civil law of naturalisation, there is no place for the element of religion, whereas in Israel this is first condition laid down for the acquisition of Israeli *nationality.*

The Arabs have no right of political association. Their political representation in the Israeli parliament is not in proportion to their

[54] - *Cf. supra.* pp. 39 and 41.
[55] - *Cf.* Lehmann, in *Journal du Droit International,* 1963, p. 694.

importance in the State of Israel. With only six seats out of 120, the Arabs, who constitute 11% of the total population, are not adequately represented. Moreover, no Arab holds a responsible post in any of the organs of the State of Israel. Finally, as regards freedom of expression and freedom of the press, these rights have been denied the Arabs by the Supreme Court in Jerusalem.[56]

B) Public freedoms are also the object of restrictive measures on the part of the Israeli authorities. Freedom of movement and residence, recognised by Article 13 of the Universal Declaration of Human Rights, is "organised" in such a manner that the Arabs are in fact unable to exercise it.

The *Law and Administration Ordinance*,[57] inspired by the Defense Emergency Regulations enacted by the Mandatory Power in 1945, authorises the Israeli Minister of Defence to limit the movements of the Arab minority and the exercise by them of other individual liberties, by means of emergency regulations. These regulations have established "Defence Areas" within which there are "security Zones" where the Minister can exercise his authority, either directly, or by delegating it to other officers.

In this way three military security zones, which no person had the right to enter, were created. Those who were permanent residents of these zones could not leave them without prior permission from the authorities. Violations of these restrictions made the offender liable to either expulsion or to imprisonment and fines, or both. Sentences, against which there was no appeal, were passed by military tribunals unhampered by any form of procedural restrictions.

In these Zones,[58] the commissioners had extremely wide powers. They were authorised to remove or deport the inhabitants of the Zones, to seize and to hold "any goods, articles or objects," to enter

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56 - *Cf.* "Les Arabes en Israël," *Les Temps Modernes, op. cit.*, pp. 804 and 805. In South Africa a series of legislative texts has limited to the minimum the exercise of public freedoms and political rights. They are the *South Africa Act of 1909*, the *Publication and Entertainments Bill of 1957*, and the *Unlawful Organisation Act of 1960*,

57 - *Cf. Laws of the State of Israel*, vol. I, p. 8.

58 - The three Zones created were the Northern Area in Galilee, the central sector or "Little Triangle" and the sub-district of Beersheba.

and search at any moment, to limit the movement of persons, to impose restrictions in the field of employment and business, to issue deportation orders, to place any person under police supervision, or to force him to live where ordered.

The commissioners could also confiscate any land in the interests of public security; they had extensive powers to requisition and to impose military occupation and charge the cost of it to the inhabitants, to impose a curfew, and to suspend postal and all other public services.

Don Peretz[59] has accurately summed up the position of the Arabs as follows: "Arabs in these areas lived under a complex of legal restrictions. Their movement into, out of, and within security zones was regulated by the military. Legal residents could be banished and their properties confiscated. The populations of whole villages could be removed from one area to another. The only authority entitled to deal with infringements of emergency regulations was a military court, whose decisions were not subject to the jurisdiction of the Civil Courts of Appeal."

Moreover, even Jewish lawyers have condemned the application of these emergency laws.[60] Meeting in Tel-Aviv on February 7, 1947, they recalled that the laws deprived citizens of their fundamental freedom, and constituted a threat to the principles of legality and individual liberty. Such laws, they said, which were liable to lead to dictatorial government, should be rescinded.

This hope was not to be fulfilled. On the contrary, the laws in question have been the instrument of a policy aimed at the eviction of both Christian and Moslem Arabs who had remained on their lands. In its desire to create a predominantly Jewish State, Israel stepped up its drive to induce the Arabs to quit. The Arabs had no other choice but to leave Palestine, thus making room for Jewish immigrants.[61]

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59 - Don Peretz, *op. cit.*, chap. VII, pp. 95 and 96.

60 - *Cf.* "Les Arabes en Israël," *Les Temps Modernes, op. cit.*, p. 808 sqq.

61 - In South Africa, the movements and residence of negroes are subject to regulations which first appeared in the *Natives Labour Registration Act* (1911) the most recent version being the *Natives Act of 1952*. The latter

C) Everything possible has been done to restrict the exercise of what might be called concrete freedoms, such as the right to education and to work.

The organisation of Secondary education for the Arabs in Israel is most inadequate. There are only six schools, which function under most unsatisfactory conditions. Libraries, laboratories and books are almost non-existent; the buildings are inconvenient or very old. Teachers are recruited more for their submissiveness than for their competence. A total of only two thousand pupils attend these mediocre secondary schools. This situation has resulted in a very low standard of education, as is attested by the fact that only 5.4% of the pupils pass the *bagrut* (Matriculation) examination. Furthermore, examinations in Hebrew and Hebrew literature are compulsory for Arab secondary school pupils of whom, naturally only a very small number reach the university.[62]

Thus, instead of the system being organised so as to provide equal opportunities for Arabs and Jews, education for Arabs is systematically neglected to impede the formation of an Arab elite.

It is a fact too, that the Arab minority is being proletarianised as a result of the reduction in the number of Arab landowners. Arab labourers employed in mines, industry and public works, are restricted to inferior jobs, and rigorous working conditions often compel them to move from one part of the country to another; 50% of Arab

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([61] - Cont'd)
substitutes a control booklet for the various laissez-passer documents *(Reference Book)* and coordinates the old system of *Pass Laws* controlling and restricting the movements of negroes. Moreover, a negro can only reside in a zone specified by the law with prior and express authorisation, which can be refused for a variety of reasons. No African can reside for more than 72 hours in an urban zone, or a designated zone, unless he was born therein or is a resident thereof, or has continuously worked therein for more than ten years. The law grants discretionary powers to any responsible civil servant who "has reason to believe" that an African, who finds himself in an urban zone, is "idle, has loose morals or is capable of disturbing public order," to arrest him "without a warrant" and to charge him before a Commissioner for Native Affairs or a Magistrate.

[62] - *Cf.* "Les Arabes en Israël," *Les Temps Modernes, op. cit.,* pp. 800 and 802. It is to be noted that a similar discriminatory regime in education exists in South Africa. *The Bantu Education Act* establishes separate schools and curricula for whites and blacks.

workmen, in fact, are constantly changing both the places where they work and the kind of work they do. They constitute a social group which has no means of defence against exploitation. The government admits very few Arabs to the public service (1.5%) although the Arab population, even after several exoduses, still constitutes one tenth of the population of Israel.[63]

The best analysis of the situation is provided by Rodinson in the following passage:

"Relations between Israelis and Arabs *have been relations of domination rather than of exploitation.* Whatever the particular reasons for the flight of the Arabs from Israeli territory, which has reduced their number from two thirds to one tenth of the population, the general cause is undoubtedly the determination of the new settlers, who have gradually infiltrated into Palestine over the past sixty years, to make themselves the dominant element in a Jewish national State."[64]

This State was created by world Zionism in conformity with a colonialist philosophy. The weakness and absurdity of its historical foundations have been dealt with above. Joseph Reinach, like other well-known and distinguished Jews (Judah Magnes, Martin Buber, Dr. Elmer Berger, Maxime Rodinson...) wrote in the *Journal des Débats* of March 30, 1919: "As there is neither a Jewish race nor a Jewish nation, as there is only a Jewish religion, Zionism is a folly —a triple historical, archaeological and ethnic error."

One must add to this that it was also a legal error, as Zionism was completely lacking in the legal titles necessary for the creation of Israel.

[63] - Similar remarks can be made about South Africa. *The Labour Regulation Act* of 1911, the *Workmen's Wages Protection Act* of 1911, the *Natives Urban Areas Act* of 1923 apply the principle of *apartheid.* The Africans are restricted to harsh, inferior jobs and are not allowed to compete with the whites for whom skilled jobs carrying authority and responsibility are reserved. The *Natives Law (Amendment) Act* of 1957 empowers the Minister of Labour to extend freely the application of the laws of 1911. The barrier erected to prevent Africans from obtaining jobs reserved for whites has been strengthened. The latter receive salaries much higher than those of the Africans, who are not allowed to look for work as and where they like: they are obliged to register their names in the general unemployment roll.

[64] - Maxime Rodinson: *op. cit.,* p. 80.

PART TWO

LEGAL TITLES

An erroneous interpretation of history has succeeded in winning some credence for the thesis that the Jews have historical rights in Palestine. And just as religious and humanitarian feelings have been exploited to create a trend in world public opinion favourable to Israel, so has legal argumentation been employed in an attempt to prove the legality of that State. But the legal aspect of the establishment of Israel as a State has flaws which cannot but lead the impartial observer to a different conclusion.

Although not yet fully codified, international law does assume the existence of a number of rules which, had they been strictly enforced, would have made impossible not only the abuse of its authority by the Mandatory Power in Palestine, but also the astonishing Partition resolution adopted by the United Nations, and the recognition of Israel by certain members of the international community.

This spate of legal irregularities committed since the Balfour Declaration would have been impossible, had it not been for the impotence of the League of Nations and the United Nations to enforce respect for their Covenant and Charter, and the complicity or indifference of several of the States concerned.

The first observation to be made in this respect is that the League of Nations Covenant was violated during the execution of the Palestine Mandate. Secondly, it will be shown that the United Nations Partition resolution for Palestine was null and void. Thirdly, it will be shown that the legal status of Israel has been invalid ever since the creation of the State.

I. — VIOLATION OF THE LEAGUE OF NATIONS COVENANT BY THE PALESTINE MANDATE

The Mandates system, however flexible it may be thanks to the existence of different classes of Mandates, includes a rule common to all, of which Article 22 of the League of Nations Covenant can be considered as the principal source. The Charter of the Mandate for Palestine is this constitutional text presented in a form applicable to a community.

The problem we are faced with is to discover whether the regulations governing the Mandate are in conformity with the general rules relating to the Mandatory system, or if it is to be seen as a mere variation on the mandatory formula no more, and no less, significant than were the Mandates over Irak, Transjordan or Syria, or as a patent violation of the League of Nations Covenant.

A comparative analysis of the Mandatory System based on Article 22 of the Covenant and the Mandate for Palestine, leads one to the observation that the texts are compatible only insofar as the provisions of the Mandate for Palestine which reproduce the Balfour Declaration are considered null and void.

In other words, one is inevitably led to the conclusion that the Mandate for Palestine, embodying as it does substantial departures from the basic principles of the Mandatory System, conforms only ostensibly to those principles. Let us now examine the following two aspects of this proposition:

1) THE PALESTINE MANDATE OSTENSIBLY COMPLIES WITH THE BASIC PRINCIPLES OF THE MANDATORY SYSTEM

Article 22 of the League of Nations Covenant, which is the Charter of the Mandates System, enumerates a number of principles applicable to territories and colonies which have ceased to be under the sovereignty of certain States, but which are still incapable of governing themselves under the exacting conditions of the modern world. "The well-being and development of such peoples form a sacred trust of civilisation, and it is fitting that guarantees for the proper execution of this trust should be embodied in this Covenant."

Although this text uses the words 'mandate' and 'trust', it is obvious that these two concepts, derived as they are from private law, could not form a legal basis for the formal investiture of a government with political rule over a community. The basic characteristic of this concept is, in the words of Article 22, that

it constitutes a "sacred trust of civilisation," a clear formula reflecting a well-defined political will on the part of the authors of the Mandatory System to facilitate the progress of peoples who had not yet reached complete maturity.[1]

If we are to insist on an analogy with a concept in private law, it is the concept of *trust* that immediately comes to mind.[2] This specifically Anglo-Saxon institution imposes upon the trustee a purely moral obligation. Such is the position of the Mandatory State, which should administer the territory entrusted to it by fulfilling such obligations as it has accepted, for the exclusive benefit of the inhabitants of this territory.[3]

The territory under Mandate is, in fact, entrusted to the Mandatory State not as absolute property, but in the same manner as a trustee is put in possession of the property he is entrusted with. Briefly, this obligation means that the Mandatory should act for the sole benefit of the Mandated territory. And his powers to administer it do not in any way include the right to dispose of it.

However, this reference to an institution of private law is not strictly necessary. To clarify the concept of Mandate it is sufficient to indicate that the expression was not used, either in Article 22 or in other special regulations, in a technical sense, but merely to indicate that the Mandatory acted in the name of the League of Nations.

On July 20, 1922 the League approved the Mandate for Palestine, which was an instrument defining the degree of authority, control and administration to be exercised by the Mandatory Power, in accordance with Article 22, para. 8, of the Covenant.

In connection with the particular legal status of Palestine, the following two observations must be made. These observations are also valid as regards all other Mandates.

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1 - *Cf.* A. McNair, Opinion given in the question of South West Africa, *Recueil des Arrêts, Avis consultatifs et Ordonnances,* C.I.J., 1950, p. 22 sqq.

2 - *Cf.* Brierly, in *British Yearbook of International Law,* 1929, pp. 217-219.

3 - *Cf.* J. de Villiers, Supreme Court of the Union of South Africa, *Rex v. Christian* (quoted by McNair, *op. cit.,* p. 26.)

A. In the first place, there is no fusion of the juridical organisation of the Mandatory State with that of the community placed under Mandate.

The judicial system in the Mandated territory is quite distinct from that of the Mandatory State, and must fully guarantee the rights of foreigners as well as the indigenous population.

Foreign relations are reserved for the Mandatory Power (Article 12) which negotiates and signs treaties on behalf of the Mandated territory, as its own treaties are not applicable to that territory; it is required to extend diplomatic and consular protection to the citizens of Palestine. Like all other countries placed under a Mandate, Palestine has no competence in the international field.

The guarantee of the territorial integrity of Palestine is provided for in Article 5, which makes it incumbent on the Mandatory State to ensure its protection against any cession or lease of all or part of its territory, and against the establishment therein of any foreign Power.

However, there is one exception to the general scheme outlined above: Article 1 specifies that the Mandatory Power shall have full power of legislation and administration within such limits as may be laid down by the terms of the Mandate. This is tantamount to saying that the Mandatory Power can apply its own legislation. But, apart from this particular feature, the statute for Palestine, like the majority of other Mandate charters, assures the community of a certain degree of juridical autonomy.

B. The second observation that must be made is that the *Mandatory Administration is compelled to assume obligations* in which can be discerned some of the standards of positive international law.

Freedom of conscience and the free exercise of all forms of worship, compatible with public order and good morals, are stipulated in Article 15 of the Mandate for Palestine.

The Mandatory Power is authorised to recruit volunteers for such forces as may be necessary for the maintenance of peace and order and for the defence of the country (Article 17).

It is under obligation to take all necessary measures to safeguard

the interests of the community by ensuring that the country is developed. And, subject to any international obligations accepted by it the Mandatory Power has full power to determine ownership or public control of all the natural resources of the country, or of public works, services and utilities established or to be established. It is also required to introduce a land system appropriate to the needs of the country (Article 11).

The institution of the Mandate had a civilising aim; the Mandatory Power was called upon to develop the culture of the inhabitants, to enrich the artistic heritage of the community put under Mandate. Thus Article 21 entrusted Great Britain with the task of drafting an antiquities law.

International control was provided for, as in the case of the other Mandates, in the form of a compulsory annual *report* to the Council of the League of Nations, required by Article 24 of the Palestine Mandate. The provisions of the Mandate could not be modified without the Council's consent (Article 27). As regards the termination of the Mandate, it follows from Article 28 that this could only come about by the establishment in Palestine of an independent government.

Thus, the rights and obligations vested in Britain by the Palestine Mandate can be classified in two categories. In the first come those which directly concern the administration of the territory and which correspond to the "sacred trust of civilisation" mentioned in Article 22 of the Covenant. The second category includes those which are related to the supervision and control machinery of the League of Nations and constitute the sum of the guarantees established for the accomplishment of this special mission entrusted to the Mandatory Power.

In the *Mavrommatis* decision of August 30, 1924, the International Court of Justice gave a precise definition of the extent and scope of the powers of the Mandatory State. According to the Court, the Mandatory had no right to exercise administrative power in a discretionary manner, and the expression "public control" referred to in Article 11 should be understood in its English meaning,

i.e. in the sense of method of administration.

Limits were thus placed on the exercise by the Mandatory State of its power of administration.

The rights and obligations of the Mandatory Power which we have just examined conform entirely with Article 22 of the League of Nations Covenant, and particularly with paragraph 4 of that Article.

But this respect paid to the principles of the Mandatory System is only apparent, since three Articles of the Palestine Mandate, Articles 2, 4 and 6, violate the Covenant of the League of Nations.

2) THE MANDATE FOR PALESTINE, A VIOLATION OF THE LEAGUE OF NATIONS COVENANT

Article 2 of the Mandate repeats the promise made a few years earlier by Lord Balfour. It says: "The Mandatory shall be responsible for placing the country under such political, administrative and economic conditions as will secure the establishment of the Jewish national home, as laid down in the preamble, and the development of self-governing institutions," and "also for safeguarding the civil and religious rights of all the inhabitants of Palestine, irrespective of race and religion."

The incorporation of the Balfour promise[4] in the Mandate creates doubts both as to its legality and as to its real intention.

A. – Nullity of the Balfour Declaration

The promise of November 2, 1917, by which Great Britain pledged "the establishment in Palestine of a national home for the Jewish people" is invalid on several counts.

(a) *The Balfour Declaration concerned a territory* with which Great Britain had no legal relation and which she bestowed on a party that was not qualified to receive it.

[4] - It is interesting to note that, as a result of urgent and insistent Zionist intervention, this "promise" was at first inserted by the San Remo Conference in the draft peace treaty with Turkey. This was on April 24, 1920. But the Treaty of Lausanne of July 24, 1923, which replaced the unratified Treaty of Sèvres of August 10, 1920, and established definite peace with the Ottoman Empire, made no mention at all of this promise. The Mandate did not come into force until September 29, 1923.

It is sufficient to recall that it was not until June 20, 1922 that the Mandate was granted by the League of Nations, and that the effective occupation of the territory of Palestine was achieved progressively, Gaza being occupied on November 16, 1917, and Jerusalem on December 9 of the same year.

Furthermore, the Balfour Declaration is not the result of an agreement between States. It is no more than a letter addressed by Lord Balfour to a private person with no title to enter into an official contractual obligation, since its recipient, Lord Rothschild, a Zionist British subject, did not even represent the Jewish Community which, in any case, was not a subject of international law.

(b) *But even admitting that Great Britain* considered that she had the right to act by virtue of her military occupation of Palestine, the law of war would not have allowed her to dispose of the occupied territory.[5] The entry of the British Army into Palestine, therefore, did not result in the substitution of British for Ottoman sovereignty over Palestine. Furthermore, had not the British Government stated on several occasions that the purpose of the occupation of Palestine by her troops was to liberate it from Turkish sovereignty and to establish therein a national government?[6]

(c) *The Balfour Declaration is prejudicial* to the acquired rights of the Palestine population.[7] These rights were expressly recognised by the Allies, who repeatedly affirmed that the non-Turkish peoples, subject to Ottoman rule, should be liberated and given national governments deriving their authority from the free will of the people.[8]

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[5] - *Cf.* the preamble of the Hague Convention No. IV on the Laws of War, in which it is made clear that occupied territories remain under the protection of the rules of international law.

[6] - *Cf.* Allenby's statement on December 9, 1917, the day of his entry into Jerusalem.

[7] - *Cf.* W.T. Mallison Jr.: "The Zionist Israel Juridical Claims," *George Washington Law Review*, vol. 32, 1964, p. 1002.

[8] - *Cf.* Statement of President Wilson of 1917, approved by the Allies, which mentions the liberation of non-Turkish peoples subject to the Ottoman regime.

(d) *But above all the Balfour Declaration is inconsistent* with certain provisions of the Covenant.

First of all, it is inconsistent with Article 20, which, it should be recalled, states that: "The members of the League severally agree that this covenant is accepted as abrogating all obligations or understandings *inter se* which are inconsistent with the terms thereof, and solemnly undertake that they will not hereafter enter into any engagements inconsistent with the terms thereof.

In case any Member of the League shall, before becoming a Member of the League, have undertaken any obligations inconsistent with the terms of the Covenant, it shall be the duty of such Member to take immediate steps to procure its release from such obligations."

The opinion so pertinently expressed by M. Jules Basdevant, formerly President of the International Court of Justice, enables us to pass judgment on the British attitude. "No State has the right to extend at will its own competence at the expense of other States and other peoples. International law does not recognise the British State as having competence other than over its territories and over its own subjects and nationals."[9] But the land of Palestine, inhabited by Arabs for thousands of years, has never been a British territory.

Furthermore, the Balfour Declaration contradicts one of the major principles established by the Covenant of the League of Nations in 1919, the principle that, as regards the colonies and territories which, as a result of the war, were removed from beneath the sovereignty of the defeated countries, the well-being and development of their peoples were the sacred trust of civilisation. From the application of this principle derives the prohibition to annex or colonise these territories and the obligation to guarantee the sovereignty of all peoples living in them. Article 22 of the Covenant of the League of Nations placed these territories under the international Mandatory System, which automatically implied respect for their integrity and for all rights of their respective populations. What is more, the countries placed under Mandate were to be assisted to attain their independence.

[9] J. Basdevant: *Cours de Doctorat,* Paris, 1936-1937, p. 198.

However, it must be admitted that Great Britain took care to incorporate its promise in the Mandate granted it by the Council of the League on July 24, 1922. But it is permissible, even today, to question the legal validity of the Council's decision, in view of the fact that the objectives of the Covenant had been clearly defined, as had the duties of the Mandatory to lead the peoples entrusted to its care toward progress and independence.

But, peculiar as this exceeding of its competence by the League Council may seem, the fact remains that the Balfour Declaration, recapitulated in the Mandate, in no way tended towards the creation of the State of Israel. The Mandate was the means by which Great Britain was able to facilitate the realisation of Zionist aims. The ingenuity lay in awaiting a concatenation of circumstances favourable to the creation of the Jewish State in Palestine, the opportunity to act being left to the Jews themselves. The basic rule in this policy was to avoid Arab reaction as far as possible and to guarantee the Zionist movement Britain's constant support.[10] The Balfour Declaration's position in international law has been aptly described by Arthur Koestler as: "A promise made by one nation to another nation to cede to it the territory of a third nation." This statement would be accurate but for the fact that the receiving nation had never been a nation in the sociological sense. The robbed nation, consisting of the Arabs of Palestine, who alone had the right to freely determine its future, was not consulted.

B. – The Real Meaning of the Balfour Declaration

Admitting, for the sake of the argument, that the Balfour Declaration is valid in the eyes of international law, the promise to establish a Jewish national home must, if it is to be reconciled with the principles of the Mandatory System, be interpreted in the light of:

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10 - *Cf. Report of the Commission to Study the Hussein-MacMahon Correspondence Appointed on March 6, 1939. Documents of the British Conference on Arab Palestine held in London in 1939, principal documents on the Palestine Case,* p. 30 sqq.

(a) *The history of the negotiations between the Zionist leaders and the British Government;*

(b) *A comparison of the texts proposed by each side and the text finally adopted;*

(c) *The rules of interpretation accepted by international law;*

(d) *Various legislative acts of the British Government regarding Palestine: these texts should not be regarded as cancelling each other but should, in every case, be appropriately interpreted so that each law is given its due weight and thereby allowed to contribute its particular value to the whole.*

According to this way of thinking, the Balfour Declaration is in conflict with the obligations arising from the Hussein-MacMahon negotiations, at the close of which Great Britain undertook officially to recognise the independence of the Arab States. Subsequently, she tried to escape from this impasse by stating that Palestine was not part of the areas to which she had promised independence. She pointed out that Palestine held a special position, in view of the fact that it was regarded as a holy land by the three great monotheistic religions; and that, being situated close to Egypt, it would be illogical to hand it over to the Arabs. She also maintained that the MacMahon correspondence did not allude to the parts of Syria situated to the west of Damascus, Homs, Hama and Aleppo, that is, according to Britain, Palestine, though in fact this description is more applicable to Lebanon.

But this interpretation is without importance, for Great Britain acted inconsistently with even those provisions of the Hussein-MacMahon agreement which expressly stipulated guarantees for the Holy Places, guarantees which were strengthened by the cooperation foreseen between Great Britain and the Arabs.

The exclusion of Palestine from the field of British promises —which, according to the British interpretation, did not cover the above mentioned areas of Syria—was in reality a consequence of the fact that these areas were the ones over which France was anxious to exert her influence. These areas are situated along the coast of northern Syria and are close to Beirut. But Palestine is not included

in the said areas, for it is situated to the south, not to the north of Syria. Furthermore, Palestine was mentioned among the territories proposed by the Sharif Hussein with regard to which MacMahon had made no reservations whatsoever.[11] In fact, British promises contained in the Hussein-MacMahon correspondence make no reservation whatsoever as regards the inclusion of Palestine in the Arab Kingdom envisaged in the correspondence, nor, indeed, is there any mention of the Jewish national home or of Jewish interests.[12]

In fact, the promise to create a Jewish national home must be regarded as humanitarian rather than political in character.[13] And, from a legal point of view, the clause granting Jews a national home was intended to provide the Jews with a refuge without impinging on the rights of Palestinian Arabs or the rights of Jews in any other country.[14]

The safeguard clause contained in the promise (safeguarding the rights of the non-Jewish population) is as important as the promise itself. Interpreted broadly, as indeed it should be, this clause is inconsistent with the view of a Jewish State in which the Arabs would be reduced to the status of "protected minorities."

Was the Mandatory State to devote all its attention to the Jews of Palestine, ignoring the aims of the Mandate, or was it to guarantee the protection of the natives, to safeguard their interests and to guide them towards self-government?

Was the creation of a Jewish national home in conformity with Article 5 of the Mandate, which laid upon the Mandatory Power the obligation to see "that no Palestine territory shall be ceded or leased?"

There is really no difference between the cession of all or part of a territory to a foreign Power and the granting of facilities to a group of foreigners to settle in it with a view to securing it for

11 - See the *Report of the Commission to Study the Hussein-MacMahon Correspondence of March 16, 1939, op. cit.*, p. 30 sqq.
12 - *Cf.* Mallison, *op. cit.*, pp. 1003 and 1030.
13 - *Cf.* Mallison, *op. cit.*, p. 1018.
14 - *Cf.* Mallison, *op. cit.*, p. 1021.

themselves.

Are we to conclude from this that the Mandate is entirely invalid?

Reference to the concept of trust, or trusteeship, makes it possible to reply that the illegality of the act committed by the trustee, or the mandatory, does not entail the nullity of the trusteeship or the mandate. Only the vitiated act is null and void.

Thus the Mandate for Palestine remains in conformity with the Covenant of the League of Nations, except in its provisions regarding the creation of a Jewish national home, which in turn have led to the creation of a Jewish State and to the disappearance of Palestine.

We arrive at the same conclusion when we consider that the formal creation of an international civil service—which was really what happened when Mandates were entrusted to various Powers—is valid only insofar as it is in conformity with the provisions of the Covenant which, of course, are of overriding validity. All provisions of the particular law which contravene the general provisions of the Covenant are to be considered as null and void.

We hope that we have now made it sufficiently clear that the Covenant did not open the door to a partition of Palestine, and that the normal conclusion of Mandates A was the acquisition of statehood by local governments.

All this explanation would have been completely unnecessary if the creators of the Mandatory System had considered themselves more bound by the spirit and the letter of the Covenant. This unfortunate precedent, which led the highest international bodies to break away from the rule of law, was not to remain an isolated case. The United Nations has also taken certain liberties with the Charter.

II.—THE ILLEGAL ACTION OF THE UNITED NATIONS

There is no doubt that the United Nations was competent to deal with the Palestine problem. However, this did not mean that it was at liberty to take any decision it fancied. In this respect, the

Partition resolution is absolutely null and void.

1) COMPETENCE OF THE UNITED NATIONS IN THE PALESTINE QUESTION:[15]

The Palestine problem was submitted to the United Nations as early as 1947, when the Organisation decided to adopt a "Partition Plan" for Palestine.[16] Before considering the problem of the competence of the United Nations in this matter, let us see how the question came to be submitted to it.

A. – Course of Events :

(a) *In February* 1947 the United Kingdom Government, realising its inability to solve the problem, intimated that it was "not prepared to administer Palestine indefinitely." The reason given was that Jews and Arabs "were unable to agree on the solution desired by it." Following the admission of failure, the United Kingdom Government requested the inclusion of the Palestine question in the Agenda of the second Ordinary Session of the General Assembly, specifying that the latter should, in accordance with the provisions of Article 10 of the Charter, make recommendations regarding the future status of Palestine.[17] It also proposed the holding of a special session of the General Assembly for the purpose of constituting a special committee to make a preliminary study, which the General Assembly would examine during its next ordinary session. A counter-proposal put forward by five Arab countries requested that "the termination of the British Mandate over Palestine and the declaration of its independence" should also be considered during the special session.

But these countries were unable to get this very important

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15 - It is a question of competence at the time when Great Britain gave up her Mandate over Palestine.

16 - Resolution No. 181 (II) of November 29, 1947. This resolution was adopted by the U.N. General Assembly during its Second Ordinary Session by 33 votes against 13 with 10 abstentions. The plan calls for the creation in Palestine of two States, Arab and Jewish, with a special status for Jerusalem. There was also to be an economic union.

17 - Letter of April 3, 1947 addressed by the United Kingdom delegation to the Acting Secretary-General.

item included in the agenda, and the General Assembly confirmed this failure by 24 votes against 15, with 10 abstentions.[18] After the Political Committee had heard statements by the representatives of the Jewish Agency and the Arab Higher Committee, the General Assembly finally met and adopted two resolutions on May 15, 1947.[19] The first created a Special Committee on Palestine, consisting of eleven members, with extremely wide powers, "to ascertain and record facts, and to investigate all questions and issues relevant to the problem of Palestine."[20]

This Committee, which was called U.N.S.C.O.P.,[21] was instructed to draw up, by September 1, 1947, a report for submission to the General Assembly, in which it was to make "appropriate proposals for the solution of the Palestine problem."

At the same time the Assembly, in its resolution No. 107, called "upon all governments and peoples, and particularly upon the inhabitants of Palestine, to refrain from ... the threat or use of force or any other action which might create an atmosphere prejudicial to an early settlement of the question of Palestine."

The Special Committee, unable to reach a unanimous decision on a single solution, submitted two different plans to the Assembly.

The majority plan, adopted by seven members of the Committee, recommended the partition of Palestine into two States (one Arab and the other Jewish) linked by an economic union, and the internationalisation of Jerusalem under United Nations trusteeship.

The minority plan, adopted by the other four members, recommended the creation of a federal State, with Jerusalem as its capital.

(b)*The Ordinary Session of the General Assembly*[22] finally set up an *Ad Hoc* Committee to consider the Palestine question and,

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[18] - Sohn: *Cases and Materials on United Nations Law,* p. 456 sqq.

[19] - Resolutions No. 106 and 107.

[20] - It is, perhaps, surprising that such a mandate could have been interpreted as including authority to enquire into Nazi crimes against the Jews *(Cf.* Plessier: *Etat juif et monde arabe,* p. 254.)

[21] - United Nations Special Committee on Palestine.

[22] - 90th Plenary Session of September 23, 1947.

in particular, to examine three points; the British proposal, the Arab proposal on the termination of the Mandate and the recognition of independence and, finally, the report of the Special Committee.[23] The *Ad Hoc* Committee appointed from among its members a conciliation group and two sub-committees.

The first sub-committee recommended the adoption of a resolution on the basis of the plan for Partition accompanied by economic union: it proposed only slight modifications of the recommendations made by the majority of U.N.S.C.O.P.

The second sub-committee submitted three proposals, *one of which was most important:* it suggested that the General Assembly, before making any recommendations whatsoever, should ask the International Court of Justice for an advisory opinion on eight legal questions and in particular, on the following two:

(g) *"Whether the United Nations is competent to recommend either of the two plans and recommendations of the majority or minority of the United Nations Special Committee on Palestine, or any other solution involving partition of the territory of Palestine, or a permanent trusteeship over any city or part of Palestine, without the consent of the majority of the people of Palestine.*

(h) *Whether the United Nations or any of its Member States, is competent to enforce or recommend the enforcement of any proposal concerning the Constitution and future government of Palestine, in particular, any plan of partition which is contrary to the wishes, or adopted without the consent of, the inhabitants of Palestine."*[24]

The *Ad Hoc* Committee rejected the first seven points by 25 votes to 18 with 11 abstentions; the eighth, i.e., point *f* of the plan, was just rejected by a vote of 21 to 20 with 13 abstentions.

The *Ad Hoc* Committee did, however, adopt the Partition plan by 25 votes to 13, with 17 abstentions; two members being absent.

Such a result, secured through strong Zionist pressure, was

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[23] - *Repertory of Practice Followed by the U.N. Organs,* vol. 1, p. 469-470.

[24] - *Repertory, op. cit.,* and Sohn, *op. cit.,* p. 457.

certainly no indication that, in the General Assembly, the Committee's report would receive the two thirds majority required for its adoption. Despite the approval by the "Two Great Powers" of the Committee's Partition proposal, the result remained uncertain because of the impressive number of abstentions. Besides Great Britain, which abstained because she was only willing to accept a solution on which both sides could agree,—such a solution was, of course, purely hypothetical—France did the same because she desired to maintain a certain measure of neutrality. Several Latin American countries, Greece and Yugoslavia refused to support the Partition plan.

It is undeniable that, at that time, very strong pressure was brought to bear upon several States by the Zionists and the United States. Many countries which had voted one way in Committee found themselves obliged to vote in a different way at the Plenary Session. Harry Truman, former President of the United States, makes no secret of this in his "Memoirs."[25] With eleven months to go before the presidential elections in America, he found that he could not relinquish the valuable support of the Zionist vote; he therefore rallied to the support of the Partition plan: "I instructed the State Department to support the Partition plan."[26]

From that time on the representatives of the United States impressed upon every delegation the necessity to adopt a "positive attitude;" the means employed was more often intimidation than persuasion. In this way Belgium, France, Haiti, Liberia, Luxemburg, the Netherlands, New Zealand, Paraguay and the Philippines found themselves obliged to reconsider their vote at the Plenary Session.

At the same time, the Zionists subjected several delegations to extreme and embarrassing pressure. This pressure took several forms, the most readily available being blackmail by charges of anti-Semitism. Every question raised about the future of the Palestinian people, every query about the right to establish the "National Home" in a land already inhabited, every qualm expressed as regards the

[25] - Harry Truman: *"Memoirs,"* Paris, Plon edit., 1956.
[26] - *ibid.*, vol. II, p. 188.

competence of the United Nations to create a State, to impose it on a people and, by the same token, to condemn that people to exile—were construed as so many insults to the dead of the Nazi camps. Zionist excesses were such that they almost jeopardised the Jews' own objectives. Mr. Truman's feelings were so aroused by this Zionist campaign that Dr. Weizmann deemed it necessary to minimise its importance by attributing it to "uncontrolled elements:" "It is freely rumoured in Washington that our people have exerted undue and excessive pressure on certain delegations and have thus 'over-played' their hand. I cannot speak for unauthorised persons..."[27]

Commenting on this incident in retrospect, President Truman admitted that "the facts were that not only were there pressure movements around the United Nations unlike anything that had been seen there before, but that the White House, too, was subjected to a constant barrage. I do not think I ever had as much pressure and propaganda aimed at the White House as I had in this instance. The persistence of a few of the extreme Zionist leaders —actuated by political motives and engaging in political threats—disturbed me and annoyed me. Some were even suggesting that we pressure sovereign nations into favourable votes in the General Assembly."[28]

President Truman intimates that he himself was not influenced by these pressures, but in his "Memoirs," published in 1949, Dr. Weizmann writes that the adoption of the Partition resolution was mainly due to the intervention and efforts of President Truman.

This emotional campaign had a profound influence on the decisions of several delegations, in view of the wide range of the *Leit-motivs* employed: antisemitic blackmail, exploitation of Nazi persecutions, the sufferings of the Jews in central Europe—not to mention *the weight of twenty billion dollars of credits which the*

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27 - Dr. Weizmann's letter to President Truman, New York Times, November 27, 1947 and H. Truman, *"Memoirs," op. cit.*, vol. II. p. 191.

28 - H. Truman: *op. cit.*, vol. II, p. 192.

United States granted to certain countries at that time.[29]

In this affair the Zionists not only engaged the responsibility of the United States, but also dragged in their wake nations which, after long hesitation, finally consented to sacrifice both the people of Palestine and international ethics.

The General Assembly simply confirmed the Partition plan proposed by the Ad Hoc Committee.[30] This resolution was not approved by the immense majority of Asian and African countries, and certainly not by any country geographically close to Palestine.

Foreseeing difficulties in the implementation of its recommendations, the General Assembly requested that:

"(a) *The Security Council take the necessary measures as provided for in the plan for its implementation;*

. . . . . ;

(c) *The Security Council determines as a threat to the peace, breach of the peace, or act of aggression, in accordance with Article 39 of the Charter, any attempt to alter by force the settlement envisaged by this resolution.*"

But in view of the pertinent objections raised in the Council as to the competence of the General Assembly and of the Security Council in this affair, the latter did not give effect to the resolution nor did it issue any directives to the Committee which was to implement it.[31]

The United States at first employed the power of persuasion, and later all sorts of pressure, to secure the adoption of resolution 181 (II), but was forced to modify its position in view of the magnitude of the difficulties and of Zionist excesses. Thus, during the meeting of the Security Council in November 1947, the U.S. representative expressed the desire that no date should be fixed

[29] - *Le Monde,* November 2-3, 1947.

For an account of all the pressures and intimidations resorted to by the Zionists, seethe excellent study by Kermit Roosevelt: "The Partition of Palestine, a Lesson in Pressure Politics," *Middle East Journal,* January, 1948. p. 1-16. Regarding Zionist activities in the U.S.A. see also *supra* p. 41 and 42, note 16, on the work of the U.S. Senate Committee presided over by Senator Fullbright.

[30] - Resolution 181 (II) of November 29, 1947 entitled: "The future government of Palestine."

for the discussion of the Assembly resolution. Then, on March 19, 1948, the United States proposed to the Council another plan which was tantamount to the abandonment of resolution 181 (II).

The delegate of India, having questioned the validity of the Assembly's recommendations, requested the United Kingdom to pledge itself in advance to accept the recommendations of the Assembly on Palestine. The United Kingdom refused to implement any resolution which would not be "compatible with the aspirations of the peoples concerned."

Resolution 181 (II), therefore, could have no effect whatsoever. A final blow was dealt to it when the Security Council, refusing to decree coercive measures, asked for an extraordinary session of the General Assembly. The opening, on March 30, 1948, of an extraordinary session of the Assembly "to find a solution" to the Palestine problem could only mean the abandonment of the Partition plan. In fact, the resolution of May 14, 1948, appointing a mediator for Palestine, *suspended* the application of the partition resolution.

In view of all this, it will be readily believed that the resolution was only adopted after lively debates on the question of competence.

B. – The Problem of the Competence of the United Nations

The United Nations is undoubtedly a world Organisation, but does this legally authorise it to intervene in the Palestine affair?[32] To answer this question, we need to examine two hypotheses: that the United Nations is the successor of the League of Nations, and that the competence of the present Organisation, in the case under

[31] - The Council confined itself to calling "upon all permanent members to make recommendations to it regarding the guidance which the Council might usefully give to the Palestine Committee." In its resolution of April 2, 1948 (doc. A/532 of April 10, 1948, p. 2) the Committee confirmed that it had received no guidance or instructions from the Council regarding the implementation of the General Assembly resolution.

[32] - It is to be noted that this question of the competence of the United Nations is here examined only as an interlocutory question so that, regardless of any conclusion which may reach, there remains the problem of the legality or illegality as to the substance of the resolutions adopted.

consideration, is limited.

(a) *Is the United Nations a continuation of the League of Nations as regards the mandate over Palestine?*

In its resolution of April 18, 1946, the League of Nations Assembly expressly declared that "on the termination of the League's existence its functions with respect to the Mandated territories will come to an end," but observed that principles corresponding to those enunciated in Article 22 of the Covenant are incorporated in Chapters XI, XII and XIII of the United Nations Charter."[33]

It should be noted, in this connection, that these chapters deal with the trusteeship system and that this system only applies in the case of particular (trusteeship) agreement;[34] Palestine was not the object of such an agreement. But Article 80, paragraph 1, stipulates that, with the exception of the particular trusteeship agreements, "and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any state or any people or the terms of existing international instruments to which Members of the United Nations may respectively be parties."

It is on this basis that a number of jurists have refused to acknowledge that there could be any question of succession between the two Organisations in matters relating to Mandates.

According to Kelsen, "the United Nations did not succeed to the rights of the League of Nations as regards the former Mandated territories." He considers that there is no legal continuity in the relations of these two systems for "one had ceased to exist long before the other came into existence."[35]

It is to be noted first of all that Kelsen does not assert that the Mandate has lapsed; he merely specifies that "the trusteeship

33 - Cited by P. Guggenheim: *Traité de droit international public,* vol. I, p. 226, note 2, *Cf.*, also, International Court of Justice, *Recueil,* 1950, p. 134.

34 - Article 77, paragraph 1, reads as follows: "The trusteeship system shall apply to such territories... as may be placed thereunder by means of trusteeship agreements."

35 - H. Kelsen: *The Law of the United Nations,* London, 1951, pp. 596-597.

system did not automatically replace the Mandate system,"[36] and this is clearly indicated in Article 77 of the Charter; on the other hand Article 80, paragraph 1, clearly states that the Mandates, which are all international acts creative of rights and obligations for States and peoples, remain in force until such time as they are replaced by trusteeship agreements.[37] Besides, the continued existence of Mandates and the obligations proceeding therefrom seems to be quite obvious.

The International Court of Justice affirms that: "From all aspects, the *raison d'être* of obligations resulting from Mandates and their first objective remains. As the fulfillment of these obligations did not depend on the existence of the League of Nations they could not become obsolete simply because this organ of supervision had ceased to exist; nor could the right of the population to see the territory administered according to these rules be conditional on the existence of the League."[38]

The judges, even when they have not agreed with certain aspects of the solution recommended by the Court in this opinion, have made a point of emphasising the continued existence of the obligations of the Mandatory: Sir A. McNair, in particular, is of the opinion that international obligations arising out of the Mandate continue to exist.[39] He considers that: "The dissolution of the League of Nations . . . has not put an end to Mandates . . . I cannot say that I know of the existence of any event of which it could be said that it has, by implication, put an end to the Mandate.[40]

Thus, a first fact is established: the Mandate remains in force after the disappearance of the League of Nations.

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36 - *Op. cit.*, p. 596. The U.N. Charter, in Article 80, paragraph 2, stipulates that: "Paragraph 1 of this article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system...".

37 - Advisory opinion rendered by the International Court of Justice on July 2, 1950 on South West Africa, *Recueil des arrêts, avis consultatifs et ordonnances*, 1950, p. 133.

38 - *Recueil*, I.C.J., 1950, p. 133.

39 - Individual opinion, *Recueil*, I.C.J., 1950, p. 162.

40 - McNair, *op. cit.*, p. 157.

Moreover, although the object of the Mandate is a "sacred trust of civilisation," it also has the characteristics of an international civil service.[41] From this point of view, the Mandate system has a statutory nature, and this status is specified "in each particular case by an act-law which is the charter for the Mandate."[42] But, in chapters XI, XII and XIII, relative to the trusteeship system,[43] the United Nations Charter stipulates an equivalent status. It is therefore unquestionable that the United Nations has succeeded the League of Nations, for the U.N. is an international organ other than that provided for in the League of Nations Covenant, and is endowed with similar, though not identical, functions.[44] This succession has been very clearly affirmed by the International Court of Justice as regards one aspect of the Mandate which had been questioned by certain writers: succession in the powers to supervise the execution of a Class C Mandate. Therefore, the succession of the United Nations to the League of Nations in matters relating to Mandates becomes *a fortiori* imperative when the Mandate is a Class A one, and *also when the Mandatory Power relinquishes the administration of a territory, as Great Britain did.* To refuse to recognise this succession of the two international Organisations in this field, especially in the particular case of Palestine, would involve ignoring this "sacred trust of civilisation," which is one of the essential contributions of modern international law.[45]

It follows from this brief explanation that the United Nations not only could, but was obliged to, assume responsibility for the Palestine problem after Great Britain had made known her wish to relinquish the Mandate.

41 - G. Scelle: *Précis du droit des gens,* Paris, 1932, vol. I, p. 170. Art. 22 of the League of Nations Covenant specifies that "the well-being and development of such peoples (those not yet able to stand by themselves) form a sacred trust of civilisation."

42 - G. Scelle, *op. cit.,* p. 170-171; See also Alvarez, dissenting opinion, *Recueil des Arrêts,* I.C.J. 1950, p. 182.

43 - See aforementioned resolution of the League of Nations of April, 1946.

44 - I.C.J. *Recueil des Arrêts...* 1950, p. 136.

45 - Disregard of this "sacred trust" would constitute a serious violation of the U.N. Charter, whose Article 73 reads as follows: "They (the Members of the Organisation) accept as *a sacred trust* the obligation to...".

(b) *Other Charter provisions confirm this competence:*

Apart from situations involving a threat to the peace, a breach of the peace or an act of aggression, it is the U.N. General Assembly which, by virtue of Article 10 of the Charter, is empowered to discuss any questions or any matters within the scope of the Charter. Furthermore, the Assembly may, on the basis of Article 14, recommend all appropriate measures to ensure "the peaceful adjustment of any situation, regardless of origin, which it deems likely to impair the general welfare or friendly relations among Nations." Thus the Assembly has a general competence which gives rise to "few remarks."[46]

More particularly, as regards the mandated territories, the General Assembly is competent, "by virtue of Article 10 of the Charter, to proceed with the consideration of the Mandate ... and to make recommendations in regard to that Mandate."[47] This view is confirmed by the decisions of the International Court of Justice.[48] In the Palestine question, the United Nations was competent in 1947, but its powers regarding the basic nature of the solution to be adopted were not unlimited.

2) LIMITATIONS OF U.N. POWERS AND NULLITY OF THE PARTITION RESOLUTION:

The United Nations General Assembly can only take action within the limits laid down in the Charter. In the Palestine case, its powers are further limited by the provisions of the Mandate.

A. – Limits set by the Provisions of the Charter :

But even if it is admitted, for the sake of the argument, that the United Nations is not bound by the obligations laid down in the Mandate and that the Organisation is only competent by virtue of its Charter, the General Assembly must, none the less, respect the principles contained in the Charter if its recommendations are to have any validity.

46 - M. Sibert, *Droit International Public,* vol. II, p. 751.
47 - McNair, *op. cit.,* p. 162. Alvarez, *op. cit.,* pp. 182, 184 and 185.
48 - Opinion on South West Africa, *Recueil,* I.C.J. 1950, p. 137.

In addition to the provisions of Articles 10 and 14, the Partition resolution on Palestine also violates the principle embodied in Article 1, paragraph 2, of the Charter, which sanctions the right of peoples to self-determination.

"It is doubtful if the United Nations," writes Professor Brownlie, "has a 'capacity to convey title,' *inter alia* because the Organisation cannot assume the role of territorial sovereign ... Thus the resolution of 1947 containing a Partition plan for Palestine was probably *ultra vires* (outside the competence of the United Nations,) and, if it was not, was not binding on member States in any case."[49]

(a) *The General Assembly has acted contrary to the provisions of Articles 10 and 14 of the Charter,* which empower it to recommend resolutions and not to make decisions. For, in effect, there is "a distinction between making a recommendation and adopting a plan prejudicial to the territorial integrity of a people and their political and legal status, and appointing a committee of the Assembly to carry out that plan."[50] The Partition plan contained in the resolution undoubtedly implied coercion, because one of its clauses provided that any attempt to alter by force the settlement set forth in the resolution should be considered as a threat to the peace, breach of the peace, or act of aggression within the meaning of Article 39. What is involved is a solution to be imposed by force and is, therefore, not a simple recommendation. But, it is an incontrovertible fact that the Assembly can only adopt resolutions capable of being implemented by force within the framework of the "Uniting for Peace" resolution of November 3, 1950. Any measure of a different nature constitutes a violation of the Charter. "Article 14 authorises the General Assembly only to make recommendations. But this resolution goes beyond simple recommendations."[51]

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49 - I. Brownlie: *Principles of Public International Law,* Clarendon Press, Oxford, 1966, pp. 161-162.

50 - *Repertory of Practice of the United Nations, op. cit.,* vol. I, p. 471.

51 - H. Kelsen: *The Law of the United Nations,* London, 1951, p. 195, note 7; L. di. Qual, *Les effets des résolutions des Nations Unies,* Paris, L.D.G.J., 1967, p. 283. (*Bibliothèque de droit international,* vol. 37).

The General Assembly can, no doubt, by virtue of Article 14, make recommendations to States, even those which are not Members of the United Nations. However, the Partition resolution went beyond recommendations since it provided for the creation of a five-member Committee and for the administration of Palestine by this Committee during a transitional period. The Assembly was competent to make a recommendation to the United Kingdom, but it was in no way competent to transfer the administration of Palestine to a committee established by the General Assembly. The resolution was an actual decision of the General Assembly to administer a territory on behalf of the United Nations.

But to decide that the United Nations shall administer a territory for the purpose of establishing two States therein, cannot be within the competence of any Organ of the United Nations.[52]

It must also be noted that the General Assembly has no competence to implement a "decision."[53] Nor is it empowered to request the Security Council to take enforcement measures by virtue of Article 14, as it did in the case of the Partition resolution.[54] In fact, the Council is not competent to implement the recommendation[55]

[52] - H. Kelsen: *Op. cit.,* p. 197. Analysing the statements made on this point by Irak, Pakistan and Cuba, particularly at the Plenary Session of November 25, 1947, the author considers that their "arguments are correct from a strictly legal point of view." The representative of Syria added that the constitution of the Committee entrusted with the task of administering Palestine was illegal, its members having been appointed by the President of the Assembly and not by the Assembly itself, which was a breach of Article 84 of the Rules of Procedure (S/PV. 254, p. 21.)

[53] - *Cf.* The statement of the Syrian representative (doc. A/Cl/Sr. 1200) which refers to other recommendations rejected by the different states. The limitations of Article 14 of the Charter are quite clear, as are also the dispositions of Chapter VI.

[54] - *Cf.,* The statement of the Syrian representative, doc. S/PV.260, p. 13.

[55] - *Cf.,* Hans Kelsen: *op. cit.,* p. 287. Article 36 of the Charter only refers to methods of adjustment, whereas the creation of two States goes further; and even if the Council had power to act on the basis of this Article, it would not have been able to do so until after the enquiry prescribed by article 34 was completed. Article 39, which envisages a situation constituting a threat to the peace, was inoperative in the case in question: "The Charter does not empower the Security Council to enforce a political settlement, whether it was in pursuance of a recommendation made by the Assembly or of one made by the Council itself... The Council's action should not have as an aim the imposition of partition but the maintenance of peace." (Security Council, 253rd meeting, Feb. 24, 1947, p. 41.)

and, as we know, it refrained from taking any measures.

Some observers believe there is an inconsistency in the attitude of the Arab States, which all voted against the resolution and asked in vain that the International Court of Justice be consulted on the Partition plan; for while they criticize Resolution 181 (II), they invoke other resolutions of the Assembly, for example, those concerning the Palestine refugees. In reality, the Arab States, in asking for the return of the refugees, are invoking *a right* recognised by the General Assembly. Likewise, when they demand the application of the principle of self-determination, they are invoking *another right,* which the Assembly does not create but merely affirms.[56] In other words, while a resolution cannot destroy the force of a principle of law, neither can it create a right which does not otherwise exist.

More particularly, the Assembly has no power to oppose the right of peoples to self-determination.

(b) *The consequences of the principle of self-determination as applied to Palestine:*

The legality of the recommendations of the Assembly was subordinate to respect for the principle of self-determination.

In this connection, two hypotheses must be considered:

According to the first, the Assembly could have secured the consent of the Palestinians by means of a plebiscite before any recommendation was made. However, not only was this plebiscite not held, but in addition, a proposal that the International Court of Justice be requested to give an advisory opinion on the powers of the United Nations in this matter was rejected.[57]

In default of a plebiscite, respect for the principles of self-determination, and of the territorial integrity of Palestine, implied that the very most the General Assembly could do was to adopt a resolution recommending that the rights of the Jewish community as a *minority* be guaranteed. In creating a Jewish State by the Parti-

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[56] - The resolution does not *create* rights but merely *enunciates* them.

[57] - *Cf. supra,* pp. 107-108. This is point *h* of the proposals made by the second *ad hoc sub-committee. Cf.* also Sohn, *op. cit.,* p. 457.

tion resolution, the United Nations went beyond the simple protection of a community, by giving it an international status. In so doing, the United Nations committed a grave violation of the Charter, a violation which, in itself, deprives resolution 181 (II) of any legal basis whatsoever.

According to United Nations practice, self-determination is the right of the majority to exercise power *within a political entity*. In other words, it is necessary that there should be stable frontiers, so that political change may be brought about, within the framework of these frontiers, through self-determination.[58] This cannot apply to the Jews, who are scattered throughout the world and are united by no juridical links.[59]

(c) *Moreover, the Partition resolution could not be justified by the Charter provisions relating to non-self-governing territories:*

This is, in fact, the only case where the United Nations can create new States by detaching territory which is "not yet autonomous" from the colonial Power. Besides, the birth of a new State is the natural consequence of the Trusteeship system set up by the United Nations Charter. But these provisions do not apply in the case of Palestine.[60]

For Palestine was not subject to the Trusteeship system, but to that of the Mandate, and, more particularly, of Mandate A. But the aim of the latter system was the independence of Palestine in

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58 - R. Higgins: *The Development of International Law Through the Political Organs of the United Nations*, p. 104.

59 - *Cf., supra,* Part one: *The Historical "Rights,"* pp. 37-38 and *infra,* pp. 143-144. The principle of self-determination is a dominant general principle which the United Nations cannot violate for, according to Ian Browlie, it fors part of the *jus cogens.*

According to A. Taylor (*Prelude to Israel,* New York, 1959, Chapter IV: The creation of Israel), President Truman considered that the Balfour Declaration was in conformity with the principles of Wilson on the right of peoples to self-determination. "One cannot," says Taylor, "but note the '*enormous error*' of President Truman, for the Balfour Declaration is in basic contradiction with the principle of self-determination which, if applied to Palestine, would have prevented the establishment of a Jewish State for a population which was, in the main, non-Jewish."

60 - *Cf.,* A. Mathiot: "Le statut des territoires dépendants d'après la Charte des Nations Unies," *Revue Générale du droit international public,* 1946, p. 159 sqq.

respect of its territory as a whole, not the independence, through splintering them, of the various human communities who happened to be living there. Moreover, the Charter provisions only apply with reference to a colonial power. It would have been ridiculous, in this case, to consider the Arab majority as a colonial Power.

In actual practice, the principle of non-interference by the United Nations in the internal affairs of any State embodied in Article 2, paragraph 7, of the Charter, does not, in general, apply to territories which are not yet independent. The United Nations reserved for itself the right to look into the colonial policy of the Powers.[61] But if this principle cannot be invoked by a colonial Power against the international Organisation, the United Nations, in turn, is strictly forbidden to interfere in relations between ethnic groups in a dependent territory, except in cases where the object of such interference is to hold a plebiscite.[62]

It follows therefore, that not only did the Charter not authorise the United Nations to adopt such a resolution, but that it actually prohibited it. The Assembly had power to act only within the framework of the Mandate for Palestine.

B. – Limitations Set by the Provisions of the Mandate:

As we have seen, the Mandate remained in force after the disappearance of the League of Nations, and the United Nations inherited the responsibilities arising from the provisions of the Mandate. Therefore, if the General Assembly was competent to deal with the Palestine question, it was obliged, in its search for a substantive solution, *to act solely within the framework of the Mandate* and to respect its provisions. Its freedom was in this case limited by the provisions of the Charter, as we have seen.

Briefly, the existence of an applicable juridical text obliges

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[61] - Of particular significance were the resolutions adopted by the United Nations in connection with the Algerian Affair, which France tried in vain to have regarded as an "internal affair."

[62] - In this connection *cf.*, for example, General Assembly resolution 637 of December 16, 1952.

the Assembly to adopt only solutions which are in conformity with the provisions of that text.

This is what is called, in national law, the principle of the link between competence and the substance of applicable law. The General Assembly only acquires its general *political* competence when faced with a *situation* which is not subject to any legal text from which an appropriate solution can derive. But when such a legal provision exists, the competence of the Assembly ceases to be political and becomes juridical.

The Mandate laid down a limited number of solutions; nevertheless, the United Nations remained free to choose, within these limits, whatever solution it deemed appropriate, with due consideration of the facts of the situation as regards the capacity of the Palestinian people to govern itself. Had such capacity been acknowleged in 1947, the answer to Britain's request could have been none other than the declaration of Palestine's independence; the problem would have received a definite solution.

But if, as actually happened, the General Assembly was not to recognise the Palestinian people as being capable of governing themselves, it was obliged to choose one of the following two solutions:

— Either that the administration of Palestine be continued by the United Nations itself, by application of the Trusteeship system provided for in the Charter;[63]

— Or else to entrust this administration to a third party, not directly concerned, by concluding a trusteeship agreement with it. The Partition resolution is therefore basically void, because it is

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[63] - This solution was recommended by the United States Government in 1948. At the 271st session of the Security Council on March 19, 1948, the U.S. representative stated that his "government believes that a temporary trusteeship for Palestine should be established under the Trusteeship Council of the United Nations to maintain the peace and to afford the Jews and Arabs of Palestine, who must live together, further opportunity to reach an agreement regarding the future government of that country." A Trusteeship Plan for Palestine was submitted by the U.S. delegation to the Special Session of the General Assembly (Document A/Cl/277 referred to by Kelsen, *op. cit.*).

contrary to the provisions of Article 5 of the Mandate, which affirms that no Palestine territory "shall be ceded or leased to, or in any way placed under the control of, the government of any foreign power."

It is quite obvious, therefore, that the creation of Israel has no legal basis whatever either in the Mandate or in the Partition resolution. That is why Israel tends more and more to rely on facts and events which have occurred since 1948, while by the same token, it drops the first two arguments, which are legal ones.

III. — PERMANENT ILLEGALITY OF ISRAEL SINCE 1948:

Some people have believed, and even asserted, that the creation of the State of Israel has ceased to be a phenomenon of "juridical pathology." Admitting, at least by implication, that its creation was of questionable legality, they have considered that a continued existence for nearly twenty years has purged it of the blemishes which disfigured its entry upon the international scene. But the twenty years which have elapsed since the United Nations adopted the Partition resolution have not strengthened Israel's position which, far from being consolidated by the lapse of time, remains as precarious as ever from a legal point of view.

Time has in no way strengthened the position of Israel. A mere *de facto* existence for twenty years has not brought about a miraculous change in its legal status and has not endowed it with legality in the eyes of international law. Yet this is the thesis advanced by the Zionists and a few others who, basing their attitude on the continued existence of Israel, believe that this continued existence has modified the legal situation by devolution of the contested territory to another sovereign.

Moreover, paradoxically enough, the same people who invoke the principle of prescription on Israel's behalf, recognising the right of the Jews to return to Palestine after an absence of two thousand years, deny this right to Palestinians driven out of their land hardly twenty years ago.

In short, Israel claims the right to remain where it is on the

basis of *acquisitive prescription.* But even supposing that it was permissible to invoke this method of acquiring territorial sovereignty in connection with the Palestinian problem, it must be noted that Israel does not fulfil the conditions required by international law as regards prescription.

Furthermore, the refusal of the Arab countries to recognise Israel has perpetuated the illegal position of this "State," a position which, furthermore, has been made worse by Israel's constant refusal to implement the resolutions of the United Nations.

1) ISRAEL CANNOT AVAIL ITSELF OF THE CONCEPT OF ACQUISITIVE PRESCRIPTION:

Admitted, though with many limitations in both law and in practice, the concept of acquisition of title by prescription received a jurisprudential application in the judgement delivered on April 4, 1929 in the *Island of Palmas Case* and, implicitly, in the judgement by the P.C.I.J. (Permanent Court of International Justice) of April 5, 1933 regarding Eastern Greenland.

Is it reasonable to suppose that this concept which is applied by international tribunals only with great caution, recognised by only a few writers,[64] and but rarely incorporated into conventional law, should have enabled Israel to establish a valid legal title?

Even if we admit that acquisition by prescription is recognised in international law,[65] we must, in order to give a correct answer to this question, consider the conditions for the validity of acqui-

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64 - The Internationalists are very divided on the existence and validity of prescription. More than half of them, and they are not the least important, refuse to acknowledge it. Among those who support the concept is Louis Delbez: *Principes généraux de droit international public.* Paris, 1964, p. 269. Against it is Ian Brownlie; *Principles of Public International Law,* Clarendon Press, Oxford, 1966: "Since acquiescence is by itself a source of right, an independent notion of prescription has no place in international law" (p. 146). *Cf.* for the point in question by Roger Pinto: "La prescription en droit international," *Recueil des Cours de l'Académie de droit international de La Haye,* 1955, vol. 87, p. 390. For bibliography, see Verykios: *La prescription en droit international,* thesis, Paris, 1934.

65 - *Cf.,* M. Sibert: *Traité de droit international public* vol. I, Paris, 1965. This work adopts the most unfavourable attitude as far as Palestine is concerned, that of admitting the validity of prescription in international law.

sitive prescription in the light of the facts of the Palestine problem. Then, and only then, shall we be in a position to conclude whether or not Israel was entitled to acquire the land of Palestine by prescription.

Prescription is a well-defined legal process in internal law, but it is not so precisely defined in public international law. The rules concerning the duration of prescription or the nature of possession, cannot be removed bodily from one juridical system to the other. Those who acknowledge the existence of prescription in international law do not regard this process as a mere question of time.

What, then, are the conditions for acquisitive prescription or, to put it differently, what should be the characteristics of the possession which serves as a basis for such prescription?

— *Possession must be "nec clam et nec precario,"* i.e., not clandestine and not carried out on behalf of others;

— Possession must be *"nec vi,"* that is, it should not be accompanied by force. Who would dare to maintain that such was not the case as regards Palestine?

— Possession must be uninterrupted and uncontested.

A study of these three conditions reveals that the duration of possession alone is not sufficient for the validation of title, as the British Government maintained.[66]

Since as early as the arbitral award given on June 5, 1911 in the *Chamizal Arbitration*[67] between the United States and Mexico, arbitral jurisdiction has been concerned to ascertain if the possession invoked by the former was "not troubled, uninterrupted and peaceful." In that case it established that not one of these conditions was fulfilled and, in particular, that possession was far from being peaceful. Possession lacked "one of the characteristics serving as a basis for prescription."

The arbitral award in question also had the merit of clearly showing that one of the conditions for prescription was that it should be uninterrupted. Arbitral jurisdiction did not, however,

[66] - *Cf.*, Anglo-Venezuelan dispute over Guiana, decision of 1899, *Revue de droit international public*, 1901, p. 78.

[67] - *Cf.*, *American Journal of International Law*, 1911, p. 785 sqq.

merely adapt the methods of municipal law, which insists that the interruption of prescription must be established by a lawsuit; it showed itself flexible and admitted that a diplomatic protest was sufficient.

Here again, the indications which emerge from court decisions in this matter are of value in that they spell out the conditions which must be fulfilled. Both the history of Palestine and international practice provide elements which can only be viewed and interpreted as acts which interrupt prescription.

Thus, the fact that the Palestinian people, did not submit to force as soon as the attack took place, and the fact that they did not cease to demand their return to their usurped homeland, interrupt prescription.

Thus, also, the United Nations resolutions reaffirming the right of the Palestinian people to return to their homeland, are acts which interrupt prescription. International law requires that prescription be continuous, publicly known and uninterrupted, but it also requires that it be *peaceful.* In this respect, the arbitral decision in the *Island of Palmas Case*[68] had occasion to emphasise that possession must be peaceful. The arbitrator Max Huber established that there was no force.

As regards the duration of possession, no general rule can be deduced from the study of international law. Some arbitrations require immemorial possession, while others require possession for sixty years. Certain writers speak of thirty or fifty-year periods. Be that as it may, even though international law does not contain definite and precise rules, it at least requires a period of time longer than that which has elapsed since the creation of Israel.

Thus Israel cannot claim to have acquired Palestine through prescription, because possession was either impaired by violence or of too short duration. Neither Israel's occupation of Palestine, nor her successive expansions, entitle her to claim it as hers by "usucaption," if only because the State at whose expense prescription is

[68] - *Cf.* McNair and Lauterpacht: *Annual Digest of Public International Law Cases,* (Years 1927-1928), p. 103 sqq.

claimed has never stopped protesting. In these conditions, no transfer of sovereignty can have been validly effected.

Those who originally subscribed to the theory that prescription was valid in this case, were eventually obliged to abandon it, because they were convinced that it could not be a proper basis for Israel's right to keep territories acquired illegally, and it is further to be observed that the same negative conclusion can be reached through other channels.

Is there any need to recall that Israel could not have established herself except by force, as an alien minority usurping the rights of the majority? Or that this minority has driven the people of Palestine out of their land, so that they have been forced to live in exile for the past twenty years? A fundamental principle of international law, that of self-determination, has been violated. The people of Palestine should have been given the right to decide their own future by democratic procedure. The fact that a solution by force was substituted for this rule of international law obviously cannot confer any semblance of legality on the entity called Israel.

This is all the more so inasmuch as, according to a recently formulated doctrine,[69] the "*jus cogens,*" which is a body of rules in international law of an imperative nature, performs the same role as the concept of public order in municipal law. Thus the *jus cogens* has come to exercise a dominant function in international law, for there is an increasing tendency to consider that the rules of which it is composed (and which, according to Professor Brownlie, include the principle of self-determination) cannot be broken by the members of the international community or by international organisations. The rights and prerogatives attributed to the *jus cogens* are inalienable and imprescriptible. In the field of organisation, the international community reserves a prominent place for the *jus cogens.* Article 37 of the draft Law of Treaties, drawn up by the International Law Commission of the United Nations, regards every treaty which is contrary to the *jus cogens* as null and void.

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[69] - *Cf.,* Ian Brownlie, *op. cit.,* p. 417-418. *Cf.* also *supra,* part one relative to "historic rights," pp. 37-38 and p. 144.

To sum up, it is clear from the above analysis that Israel has not complied with any of the basic conditions of acquisitive prescription, and can therefore not take advantage of it. It is also evident that Israel's unwarranted invocation of acquisitive prescription constitutes a breach of an essential rule of international law, and fundamentally vitiates the position of Israel.

In default of prescription, can recognition by all States constitute a basis for arguing that the creation of Israel was legal?[70]

The Arab States have never recognised the situation arising from the "creation of Israel." They have not recognised the State of Israel, and the States not directly concerned should have refrained from recognising such a creation brought about by force. The Stimson doctrine obliged them to do so. This doctrine, as Professor Delbez pointed out, "is a prolongation and complement of the theory of prescription. It establishes that possession should be peaceful and uncontested, and provides the rule with a positive sanction, non-recognition."[71]

2) THE NON-RECOGNITION OF ISRAEL:

Israel has not been recognised by the Arab States. A certain number of States, including the United States and the U.S.S.R., have recognised her. The Arab States were perfectly justified in refusing to recognise Israel, even after her admission to the United Nations. Furthermore, it seems clear that the illegality of Israel should have led the other States to withhold their recognition.

A. – Refusal of the Arab States to Recognise Israel

The Arab States consider that Israel is a colonial phenomenon which developed and expanded in the land of Palestine at the expense of the Palestinian people, in whose hands alone remains the right of sovereignty. They claim that the United Nations, in adopting the Palestine Partition resolution, has ignored the fundamental right of the Palestinian people to self-determination, and has

[70] - *Cf.*, J. Charpentier: *La reconnaissance internationale et l'évolution du droit des gens*, Paris, Pedone, 1956.

[71] - L. Delbez, *op. cit.*, p. 270.

violated the provisions of the Charter. The General Assembly has, in fact, broken its own rules of competence.

They deplore the fact that the Security Council, far from punishing Israeli acts of aggression, has sided with Israel. In so doing, it has made it impossible to preserve the legitimate rights of the Palestinian people. Furthermore, it has failed in its mission to guarantee international peace and security in this region of the world.

Moreover, even the countries which recognize Israel, on the basis of the Partition resolution, cannot but admit that this resolution has been violated by Israel. For she has occupied territories failing outside the boundaries fixed by the resolution, and has also occupied other territories inside the armistice lines, which cannot be considered as international frontiers in the juridical sense of the word.

These countries reject Israel's claim to base her sovereignty on the right of conquest, a highly inadmissible claim, since Article 4, paragraph 4, of the Charter, prohibits the use of force in international relations.

For these reasons, the Arab States, notwithstanding the admission of Israel to the United Nations on May 11, 1949, have refused to recognise her, and consider themselves entirely justified in doing so.

(a) There is, indeed, a school of thought which holds that admission to an international organisation necessarily and automatically implies recognition of the new member by the old members. Georges Scelle has defended this point of view, asserting that there is a legal obligation to recognise any State admitted to the League of Nations.[72] This theory has been taken up by contemporary writers. Lauterpacht[73] and Guggenheim[74] have formulated the following juridical equation: admission = recognition.

(b) *However, this thesis* has been vigorously contested by an

72 - *Cf.* Georges Scelle: *Revue Générale de droit international public,* 1921.
73 - *Cf.* Lauterpacht: *Recognition in International Law,* 1947.
74 - *Cf.* Guggenheim: *Traité de droit international public,* Vol. I, p. 190.

important group of writers, who have observed that it is in utter contradiction with the present practice of members of the international community.

Thus, Kunz,[75] Cohn[76] and Briggs[77] have severely criticised the thesis of Guggenheim and Lauterpacht.

Quite recently, Brownlie[78] went over to the camp of those who consider that there is no juridical obligation to recognise a new member. He develops a double line of reasoning which is of particular interest.

In the first place, he writes, to speak of a juridical obligation is, in fact, to beg the question. It cannot be said that obligation exists except vis-à-vis a subject of international law. But, as regards the State which refuses to extend recognition, the entity to be recognised is not yet a subject of international law; therefore no obligation to recognise it is owed to this entity. Recognition, as a sovereign act, is optional, and has a political and discretionary nature. There is no juridical obligation in this matter.

In the second place, as to whether the recognition of a state is affected by its admission to the United Nations, Brownlie observes that it is wrong to hold that such admission involves *ipso jure* recognition of the new member by all the old members of the Organisation, regardless of how they voted on the question of admission. He points out that there is nothing in the Charter, or in the rules of international law outside the Charter, which obliges a State withholding recognition, *to grant political recognition to the new member and to establish with it bilateral relations,* which remain entirely discretionary.[79]

There is, therefore, no legal obligation to recognise new mem-

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[75] - Kunz, *American Journal of International Law,* Vol. 44, 1950, p. 713-719.

[76] - Cohn, *Law Quarterly Review,* 1948, p. 404-408.

[77] - Briggs, *American Journal of International Law,* Vol. 43, 1949, p. 113-121.

[78] - Ian Brownlie: *Principles of Public International Law,* Clarendon Press, Oxford, 1966, pp. 85-90.

[79] - *Cf. Memorandum of the U.N. Secretariat General,* Document S/1. 466 and Hans Kelsen: *The Law of the United Nations, op. cit.,* p. 946.

bers admitted by the World Organisation. The position of the Arab States towards Israel is thus unassailable from a legal point of view.

But if the old members are under no legal obligation to grant recognition, are they not under a legal obligation to refuse recognition?

B. – Israel's Illegality, Basis of the Refusal to Extend Recognition

The obligation to withhold recognition from new States falls upon all the members of the international community when the creation of these new States is accompanied by manifest irregularities or by acts of violence.

We need only consider the Partition resolution, and the series of successive territorial expansions brought about by force, to realise that Israel is the resultant of a series of extremely grave illegalities.

The Stimson Doctrine, which was accepted by the League of Nations, since a resolution unanimously adopted on March 11, 1932 forbade members to recognise new States created by force or conquest, has been ignored by the United Nations. Was it because the authors of the Charter, regarding this doctrine as having fallen into decline, preferred to substitute for the system of *a posteriori* condemnation established by it, a system based on the prevention of violence?

In any event, the Stimson Doctrine belongs to positive customary law, to those general principles of law mentioned in Article 38, paragraph 3, of the Statute of the International Court of Justice. It is also in keeping with Article 2, paragraph 4, of the Charter, which outlaws force; it imposes a penalty for the violation of this obligation. Finally, it is one of the factors which, should the occasion arise, prevent acquisitive prescription from coming into play.[80]

Indeed, the doctrine of non-recognition, which is a tribute paid to legality, has been "forgotten" in Israel's favour by a number of

[80] - L. Delbez: *Principes généraux du droit international public,* Paris, 1964, p. 164.

States which have recognised her. For these states, effective existence has been a preferential factor; they would certainly have adopted an attitude more respectful of the law had they complied with the old principle "*ex injuria jus non oritur,*" which is one of the general principles referred to above.

The illegality of Israel, as a State whose creation was based on force and the violation of the general principles of law, has certainly constituted an insurmountable legal obstacle to its recognition by other States.

The Arab States were, therefore, quite justified in refusing to extend their recognition to Israel, which cannot offer in her defence an alleged "*de facto*" recognition which she claims to have been accorded to her.

C. – *De Facto Non-Recognition : Existence of a State of War*

In default of *de jure* recognition, Israel, in an attempt to find a legal basis for her existence, might hope to avail herself of eventual *de facto* recognition by the Arab States as such a legal basis. But this has not come about, as a result of the continuation of the state of war which, in this case, is of a specific nature, inasmuch as it constitutes *a fundamental refusal on the part of the Arab States to recognise any right on the part of Israel to create a State.*

(a) *The specific nature of the state of war between the Arab States and Israel:*

Classical doctrine considers that a state of war is established by the setting in motion of a body of juridical rules regulating relations between belligerents themselves and between the latter and third parties.[81] Belligerency itself is recognised even in the case of entities which are not states;[82] it is, therefore, not necessary to be a State in an international law sense for certain rules of the law of war to be applied.

War, properly so-called, implies the combination of two ele-

81 - Notably P. Reuter: *Droit international public,* Paris 1963, p. 290.
82 - Mme. Paul Bastid: *Cours de droit international,* 1965-66, p. 1029.

ments: a state of war, and hostilities amounting to actual combat between armed forces. Insofar as it is lawful, war is regarded as a procedure for the settlement of a disagreement, transformed by its gravity into a dispute, between two States.[83] The State which begins a war is practising "diplomacy by other means,"[84] with a view to punishing the State which persists in its refusal to meet its demands. Such a procedure does not in any way put in question the legal existence of the State involved.[85]

In the case of Palestine, the state of war existing between the Arab States and Israel acquires a special significance; it does not mean a temporary disagreement between the parties capable of being settled; *it is a radical, fundamental refusal to recognise any right on the part of the Jewish community to create a Jewish State in Palestinian Arab territory. It is due to this special nature that it constitutes an insurmountable obstacle to a* de facto *recognition of Israel by the Arab States.*

(b) *The beginning of the state of war in Palestine in 1948:*

On May 14, 1948, the Jews proclaimed "the State of Israel" and expressed their determination to suppress any attempt on the part of the Arab majority to oppose the creation of this State. The acts of violence committed during the period which preceded the proclamation of the Jewish State did not, for that matter, stop; on the contrary, they took on new and bigger dimensions. The purpose of these acts was to sow terror in people's hearts and, consequently, to force the Arabs to leave Palestine and seek refuge in the neighbouring Arab States.

It was then that the Palestinians asked the Arab States to help them in maintaining order inside Palestine, with a view to safeguarding their persons and their belongings. Moreover, this request was made by representative bodies, the *"Arab Higher Committee"* and the *"All-Palestine Government."* The latter was proclaimed by

83 - P. Guggenheim: *Traité de droit international public,* Vol. II, p. 98.

84 - Mme. Paul Bastid, *op. cit.,* p. 1028.

85 - It is certain that an ordinary war does not put an end to recognition between two States when such recognition took place before the beginning of hostilities.

the Arab majority in reply to the proclamation of Israel, and had a seat on the Council of the Arab League, which decided to give a favourable response to the Palestinian request.

Furthermore, the disturbances caused by the Jews inside Palestine wre so widespread that they constituted a real threat to the other Arab States themselves: a threat which gave them the right of legitimate self-defence in accordance with Article 51 of the Charter. Subsequent events were to prove how real this threat was.

Thus, in 1948, the Arab States did not wish to" crush a minority" but simply to restore security, in accordance with the request of the majority in Palestine, bu putting an end to illegality which also threatened public order in their own countries.

(c) *The state of war did not end with the Armistice Agreements:*

It is generally conceded that an armistice does not put an end to the state of war; it does no more than suspend war operations by an agreement between the belligerent parties; the local or general nature of the armistice, and its duration, do not modify its effects.[86] Only a peace treaty or, failing that, an express statement, puts an end to a state of war existing between the belligerents after the cessation of hostilities. It is true that contemporary armistices, on account of their substantive provisions, and especially because of the evolution of international law, no longer confer upon the parties as many rights as the old armistices. The belligerents can no longer resume hostilities after the signature of an armistice agreement, even if a dispute should arise between them. In fact, "the outlawing of war and the obligation to find a peaceful solution to all international disputes today no longer permit of freedom of action being left to the parties to an armistice agreement, and particularly the freedom to resume hostilities."[87]

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[86] - Art. 36 of the IVth Hague Convention of 1907; P. Guggenheim, *op. cit.*, Vol. II, p. 335, note 1; M. Lachs: *Nouvelle fonction des armistices contemporains*, in *Hommage d'une génération de juristes au Président Basdevant*, p. 315 sqq.

[87] - M. Lachs, *op. cit.*, p. 315 sqq. This shows clearly that when Israel claims that the Armistice Agreements are no longer valid, she is committing yet another violation of international law.

All the same, even though present day armistices limit the freedom of the parties concerned, they have not yet acquired the quality of putting an end to the state of war. To produce such a result, an armistice agreement should settle the very cause of the conflict, i.e. it should be equivalent in its provisions to a peace treaty. But the Armistice Agreements, far from having this meaning, were no more than an indispensable step towards the liquidation of armed conflict and the restoration of peace in Palestine.[88] Moreover, all the Armistice Agreements clearly indicate that "they do not in any way constitute peace treaties" and that they shall not "prejudice the rights, claims and positions of either party hereto in the ultimate peaceful settlement of the Palestine question.[89]

Thus a state of war continues to exist between Israel and the Arab States, because the Armistice Agreements have settled only the second element in concept of war, namely, hostilities.

The aggressive behaviour of Israel, particularly in 1956 and 1967, has proved that the Arab States were, in fact, justified in taking precautions against attacks which did not fail to materialise.

(d) *A state of war is not incompatible with the Charter of the United Nations:*

The Charter forbids the use of force or the threat of force (Article 2, paragraph 4). War is, therefore, an unlawful act in modern international law; its first element, consisting as it does of actual fighting, is undoubtedly so, but its second element, (state of war) is none the less unlawful, in that it constitutes a threat to use force.

As a counterpart to this prohibition, Article 51 of the Charter recognizes the right of the State which is attacked to defend itself. This right would be void of any real meaning if it did not also confer upon a State, which has not yet been attacked, but which has good and obvious reasons to fear an armed aggression, the right to prepare

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88 - Art. 1, paragraph 4 of the Armistice signed between Egypt and Israel on February 24, 1949.

89 - Art. XI of the same agreement. All the other Armistices contain similar provisions.

for its own defence. For Article 51 of the Charter to have its full meaning, it is necessary to recognise that such a State has the right to take advantage of the juridical rules which establish a state of war not only when it has actually been attacked.

In fact, as far as the Palestine question is concerned, the very existence of Israel constitutes aggression; but even supposing that it did not, the expansionist activities of Israel since 1949 have constituted a real and indubitable threat to all the Arab States, particularly those which border on Israel.

As far as this group of countries is concerned, therefore, a state of war, according to the provisions of international law, continues to exist. Its special nature prevents Israel from availing herself of an eventual *de facto* recognition on the part of the Arab States.

The argument that used to be put forward, that membership of the United Nations was incompatible with a state of war claimed by a member State to exist with another member State, has been declared by legal doctrine to be "wholly inadmissible,"[90] and considered as scarcely compatible with the realities of international life, even under the Charter of the United Nations.[91]

3) THE NON-IMPLEMENTATION OF UNITED NATIONS RESOLUTIONS:

Despite the great number of resolutions on the Palestine problem which have been adopted by the United Nations; action by this Organisation has, paradoxically, yielded very few practical results. The non-implementation of its resolutions has been due to two factors: violation by Israel of the decisions of the General Assembly and the Security Council, and the inadequacy of the World Organisation.

A. – Violation of U.N. Resolutions By Israel

The failure of the United Nations has, essentially, been due to

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90 - Bengt Broms, *The Legal Status of the Suez Canal,* Helsinki, 1961, p. 210, note 4.

91 - Baxter, *The Law of International Waterways,* Cambridge, Mass.; 1964, p. 222, note 163.

deliberate ill will on the part of Israel, which has persistently refused to submit to its decisions. Thus the Partition resolution, although favourable to Israel, which secured it in violation of the Charter, has not been respected by her. Israel has seized territories over and above those demarcated in the Partition plan. Thus, too, the various General Assembly resolutions on the return of the refugees, have remained a dead letter.[92] Likewise, the resolution of the General Assembly relative to the Status of Jerusalem[93] has not been implemented by Israel, and the Armistice Commission created by the Security Council has been boycotted by her.[94]

But it is mainly as regards the attacks of regular troops of the Israeli army, on the territories of neighbouring Arab States, that the violations by Israel of U.N. resolutions have been most flagrant, and the condemnations by the Security Council most severe.[95] The same has been true of the resolutions adopted by the General Assembly since the invasion of Egyptian territory in 1956, which have not been implemented by Israel.[96]

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92 - The relevant General Assembly resolutions are the following: Resolution No. 302 of December 8, 1949; Resolution No. 394 of December 14, 1950; Resolution No. 512 of January 26, 1952; Resolution No. 614 of November 6, 1952; Resolution No. 720 of November 17, 1953; Resolution No. 818 of December 4, 1954; Resolution No. 916 of December 3, 1955; Resolution No. 1018 of February 28, 1957; Resolution No. 1191 of December 12, 1957; Resolution No. 1315 of December 12, 1958.

On the contradiction involved in Arab acceptance of certain resolutions and rejection of others, see *Supra,* p. 127-128. Violation by Israel of resolutions declaratory of a right, or of those which are in conformity with the principles of international law and the Charter, is in fact tantamount to violation of the international law applied by these resolutions.

93 - General Assembly resolution No. 303 of December 9, 1949.

94 - Security Council resolution No. 48 of April 23, 1948.

95 - Security Council resolutions of May 18, 1951, of November 24, 1953, of March 29, 1955, of January 19, 1956 and of April 9, 1962. Especially as regards the resolution of April 1962, the Israeli parliament categorically rejected it. (See "Israel Digest," Vol. V, No. 9, April 27, 1962.)

96 - General Assembly resolutions of November 2, 1956, of November 4, 1956, of November 7, 1956, of November 24, 1956, of January 19, 1957, of February 2, 1957. The General Assembly, especially in its resolution of February 2, 1957, "deplores the non-compliance of Israel to complete its withdrawal behind the armistice demarcation line despite the repeated requests of the General Assembly," and calls upon Israel "to complete its withdrawal behind the armistice demarcation line without delay."

By its deliberate and persistent refusal to implement the binding resolutions of the Security Council and the principles of international law embodied in the resolutions of the General Assembly, Israel has placed herself in an illegal situation, over and above the illegality of her creation.[97]

Nevertheless, the non-implementation of U.N. resolutions on the Palestine question is not only due to deliberate non-compliance on the part of Israel; it is also a result of the inadequacy of the World Organisation itself.

B. – Inadequacy of the United Nations

When a Member State commits a breach of the Charter provisions, or when it deliberately refuses to comply with resolutions rightfully adopted by the Security Council or the General Assembly, it is mandatory upon the United Nations to take measures against such a state. These measures are threefold: sanctions, suspension of rights and privileges, and expulsion.

In case of a threat to peace, a breach of the peace or any act of aggression, the Security Council may, in accordance with Chapter VII of the Charter, decree a whole range of sanctions[98] against the recalcitrant State. But the Security Council which, according to the Charter, is responsible for the maintenance of peace, has been remiss in its duty by failing to impose sanctions against Israel.

Furthermore, the General Assembly can, by virtue of Article 5 of the Charter, decide that a Member State should be suspended from the exercise of its rights and privileges.[99] And if a Member

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[97] - On the binding force of Security Council decisions see, in particular, M. Virally: *La valeur juridique des recommandations des Organisations internationales,* A.F.D.I., 1956, pp. 83-90; L. Cavare: *Le droit international public positif,* Vol. I, p. 665; Ch. Chaumont: *L'O.N.U.,* pp. 47-48; L. di Qual: Les effets des résolutions des Nations Unies, Paris, L.G.D.J., 1967, p. 283. (*Bibliothèque de droit international,* Vol. 37).

[98] - See on this point, L. Cavare: *Le droit international public positif,* vol. I, 1961, pp. 684-690.

[99] - The power of the General Assembly is exercised in conjunction with that of the Security Council. On the recommendation of the latter the General Assembly can pronounce suspension from the exercise of rights and privileges of membership. (Art. 5 of the Charter.)

State "persistently violates the principles contained in the Charter,"[100] the General Assembly may, on the recommendation of the Security Council, expel it from the Organisation. In failing to adopt these various measures with regard to Israel, the General Assembly has failed to perform its duties.

Moreover, not only should the General Assembly or the Security Council have taken the necessary steps against Israel with a view to restoring peace; it was also incumbent upon the Members of the United Nations to help each other to implement the decisions of the Security Council in accordance with Article 48 of the Charter. In particular, it is stipulated in paragraph 2 of Articles 48 that the decisions of the Security Council shall be carried out by United Nations Members directly.[101]

In accordance with the provisions of the Charter, the Member States of the United Nations are responsible for implementing the resolutions voted by the Security Council or the General Assembly. This responsibility is clearly binding on all parties individually and collectively. And, in particular, the members of the Security Council bear a special responsibility for implementing these resolutions. Furthermore, the member States which have voted for the resolutions condemning the Israeli action also share in the responsibility for the non-implementation of these resolutions.

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100 - Article 6 of the U.N. Charter.

101 - According to the provisions of Articles 24, par. 1, and 25 of the Charter, the Members of the United Nations "agree that in carrying out its duties under this responsibility the Security Council acts on their behalf," and they "agree to accept and carry out the decisions of the Security Council." This principle of collective action by the Security Council and of the collective responsibility of the members of the Security Council therefore derives from the provisions of Articles 24, 25 and 48 of the Charter. On this point, see M. Virally: " La valeur juridique des recommendations des Organisations internationales," article quoted in *Annuaire français de droit international,* 1956, p. 84.

PART THREE

IMPLICATIONS OF THE CONFLICT

By creating the State of Israel in 1948 under notoriously illegal conditions, the Zionists entered into conflict with the Arabs who had already been pillaged and threatened.

The proclamation of the State, and the war which followed it, accelerated the exodus and expulsion of the Palestinians from their homeland. They became refugees, with all that this implies in the way of suffering and bitterness.

The Zionists were not content to secure for themselves the territories which the Partition resolution had given them at the cost of serious juridical irregularities and heavy political and moral responsibilities. After numerous attacks they succeeded in occupying part of Jerusalem, for which the United Nations had reserved at least an international status.

Violating the truce and Armistice Agreements, and unmoved by United Nations condemnation of their actions, Zionist troops continued their advance until they reached and, quite improperly, occupied the Jordanian village of Umm Rashrash on the Gulf of Aqaba, where they established by force the port of Elath, thus creating a new political problem in the Gulf.

They then proceeded to jeopardise the economies of the neighbouring countries—Lebanon, Syria and Jordan—by starting, in violation of the provisions of the international law of rivers, to divert the waters of the Jordan.

Finally, their expansionist policy, which since 1948 has found concrete expression in a series of aggressive acts, including the seizure of Palestine, the occupation of New Jerusalem, and the conquest of Umm Rashrash, has been revealed in an even more outrageous manner since their aggression of June 5, 1967. In utter disregard of the rules of the law of war and military occupation, they have annexed Syrian, Jordanian and Egyptian territories, and established themselves on one of the banks of the Suez Canal, an Egyptian waterway, which they intend not only to use but also to control. Alas, the dream of "Greater Israel," from the Nile to the Euphrates, which so clearly illustrates Israel's determination to expand, and which the Arabs have constantly denounced to sceptical

and indifferent world opinion, assumed a new and more decisive form in June 1967.

Palestinian refugees, Jerusalem, the Gulf of Aqaba, the river Jordan, the Suez Canal, these are some of the implications of the Arab-Zionist conflict.

Chapter I

The Status of Jerusalem

Few cities in the world have such emotive force and such spiritual wealth as Jerusalem. Its exclusive privilege of being the meeting place of the three great monotheistic religions has ever made it the focus of the religious fervour of Moslems, Christians and Jews alike. It was not part of its destiny that it should become first the object, then the victim of Israeli ambitions; its threefold religious vocation predisposes it to a sort of ecumenism, which is quite incompatible with its present situation as an occupied city.

Open as it is to so many different religious influences, Jerusalem, as long as it remained under Arab control, offered a most liberal welcome to all and allowed every man absolute freedom to practise the religion of his choice. From time immemorial, the believer has been able to go there to worship his God in the Temple or Sanctuary which Arab sovereignty has preserved intact for centuries.

And yet, despite the fact that this situation gave satisfaction to everybody, the status of Jerusalem as an Arab city, i.e. as a city in which everybody enjoyed freedom, gradually deteriorated from the moment when that fatal process was put in motion which was to lead the U.N. to decide on the partition of Palestine and the internationalisation of Jerusalem.

The contemporary history of Jerusalem is that of an Arab city, wrested from its legitimate sovereign, endowed in 1947 with an international status, then divided in 1948, finally to be annexed by Israel in 1967. Under the cloak of a regime of internationalisation

—a regime which was never applied and which was enacted with little or no regard to Palestinian sovereignty—Israel has expanded her empire, at first seizing part, then all, of Jerusalem.

Today, internationalisation is advanced as the best possible solution; no one remembers the simple truth that Jerusalem is an Arab city which, in logic and in justice, should be restored to the Arab homeland.

Should this debatable decision of the makers of international law lead us to consider as right an internationalisation which, after all, is no more than the culmination of a whole series of aggressions? How can one admit that the internationalisation of a territory acquired by force is capable of satisfying both the despoiled victim and equity? Jerusalem divided, Jerusalem annexed, Jerusalem internationalised, such, then, is the turbulent history of the city, to be crowned with the "happy ending," so satisfactory to some, but not to the Arabs who will never be able to forget that Jerusalem is first and foremost an Arab city.

I. — JERUSALEM PARTITIONED :

Until Jerusalem, Arab for thousands of years, was conquered by the Zionists, the faithful of the three greatest monotheistic religions in the world could visit it for the practice of their faith. Free access to the Holy Places, freedom of conscience for all the city's inhabitants, protection of all religious sanctuaries were assured and even organised, because, in 1878, the Congress of Berlin had established a partition in time and space of religious edifices and laid down conditions for the practice of each faith.

Although an Arab city, Jerusalem never either established or permitted any kind of discrimination against Jews or Christians. Based as it was on freedom, mutual respect and equality, the status of Jerusalem and the Holy Places gave satisfaction to all. There was nothing in the situation to justify the relinquishing of such a liberal regime of full freedom, for one of internationalisation. And yet, this is what the United Nations decided in its resolution of November

29, 1947, which internationalised Jerusalem as well as partitioning Palestine.

1) FROM FREEDOM TO INTERNATIONALISATION:

It is difficult to understand how an international regime could be imposed on an Arab city with a clearly defined sovereign, whose consent, to say the least, was required to this statutory change. All known regimes of internationalisation presuppose the consent of the State territorially competent, which must indicate its willingness to surrender its sovereignty in a treaty, as happened, for example, in the case of Tangiers or Trieste. Nothing of the sort happened in the case of the internationalisation of Jerusalem, where the opinion of the territorial sovereign was not asked, and where a status was imposed in accordance with which the city was set up as a *corpus separatum* administered by the United Nations, this status applying not only to Jerusalem but also to Bethlehem.

The authority entrusted with the administration was required to protect the spiritual and religious interests of the three monotheistic religions, as though they had hitherto not been perfectly protected to everybody's benefit.

Such was the erroneous *juridical* solution of a simple problem, which could only be properly solved by respecting the rights of the territorial sovereign. It was inevitable that the latter should reject a settlement which so flagrantly ignored these rights.

2) FROM INTERNATIONALISATION TO PARTITION:

The international regime decreed by the resolution of November 29, 1947 never saw the light; war between Jordan and Israel broke out immediately after the departure of British troops. A truce agreement of November 30, 1948, followed by an armistice agreement on April 3, 1949, sanctioned a *de facto* partition of Jerusalem.

It was thus that Israel achieved territorial gains by the occupation of New Jerusalem and obtained more than the United Nations had

illegally granted it two years before. Jordan asserted its sovereignty over the oldest part of the city, in which the Holy Places were situated.

This was a *de facto* partition of Jerusalem, with its boundaries traced by the ceasefire line, not a legal partition implying relinquishment of territorial sovereignty over the new part of the city.

Some have regarded the various agreements of Novembr 30, 1948 and of April 3, 1949 as constituting ratification by the United Nations of the partition of Jerusalem, since these agreements were made in the presence of the U.N. Mediator, and approved by the Security Council. But an armistice is no more than a provisional measure, which in no way prejudices the rights of the parties concerned.

If, purely for the sake of the argument, we admit that the partition of Jerusalem constituted a regime acceptable to international law, we must also admit that the attack of June 5, 1967, accompanied as it was by a total Israelisation of the city, violated that regime in a most flagrant manner.

II. — JERUSALEM ANNEXED :

Any doubts that may have been entertained about the real intentions of Israel with regard to Jerusalem, were dispelled by General Dayan after the conquest of the city. Standing before the Wailing Wall, he gave free expression to his joy, and uttered words which indicated that the Jewish State intended to annex Jerusalem. At about the same moment the Chaplain General of the Israeli army exclaimed: "A people recovers its capital; a capital recovers its people; never shall they be separated again."

Today, it is a fact that Israel considers that it has reconquered the "high place of her national past" and that she intends to organise worship in the Holy Places as she wishes.

Furthermore, the declaration proclaiming the unification of the two sectors of the city reveals Israel's intention of annexing it permanently, an attitude which was condemned by the U.N. General

Assembly during its extraordinary session of June, 1967. In its resolution of July 4, 1967, the General Assembly condemned the annexation of the Jordanian sector, and called upon Israel to rescind all measures leading to a modification of the status of the city.

Israel, however, has taken no steps to rescind any of the annexation measures. On the contrary, after the Knesset, by its decision of December 22, 1949, had proclaimed Jerusalem as the capital of the State, and after the transfer, since that date, of most of her ministries to that city, Israel maintains her policy, despite the resolutions of the United Nations and condemnation by world public opinion.[1] By abandoning the Arab population to the brutality of her troops,[2] Israel has behaved as a conqueror and, under cover of an alleged "unification," has annexed the whole of Jerusalem.

The Holy City, so rich in history, in which the spirit of tolerance and respect for all communities formerly prevailed, lies today under the domination of a partisan and persecuting State. The Arabs, Moslems as well as Christians, are threatened, and access to the Holy Places is subject to the disturbing fanaticism of Israel.

Such is the sad balance sheet of United Nations action in Palestine as it stands today. Ignoring the natural right of Palestine to preserve its integrity, that of Jerusalem included, the World Organisation has shown itself incapable of securing respect even for the international status of Jerusalem, a status which itself could not satisfy the city's legitimate sovereign, since it mutilated the city's territory and deprived that sovereign of part of it.

III. — JERUSALEM INTERNATIONALISED ?

This question mark reflects more than the anxious surprise of the Arab peoples vis-à-vis the internationalisation plan: these

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[1] - The great majority of countries have refused to establish their embassies in Jerusalem. *Cf.* on this point the article by Farag Moussa in "International Policy" (*As-Siyasa ad-Dawliya*), *Al-Ahram,* Cairo, October, 1967.

[2] - On the horrors committed by Israeli troops in Jerusalem, see the accounts given by Father Paul Gauthier and Sister Marie Thérèse in the damning pamphlet published by *Témoignage Chrétien,* Paris, Cahier No. 47.

peoples are today resolutely hostile to the plan.

In this connection, a fundamental observation must be made, before proceeding to any discussion of the question of Jerusalem. This is that the problem of internationalisation was not raised until after Israeli expansionism had again decided to question the sovereignty of Palestine over a part of its territory—as long as this region of the world remained under Arab sovereignty the question of internationalisation was never raised.

The difficulties came from outside, with massive Jewish immigration and the Jewish community's lust for conquest. The United Nations bowed to these pressures to such an extent that, far from enforcing respect for Arab sovereignty, it approved this disastrous plan for internationalisation. But the development and progress of international law is not tied to the replacement of an indisputable sovereignty by an internationalisation which is as questionable in its legality as it is inopportune in its planning.

1) THE INTERNATIONALISATION SOLUTION OF QUESTIONABLE LEGALITY:

We have already briefly indicated why the internationalisation of Jerusalem is illegal, but this blunder on the part of the United Nations is so grave that it must be stressed again.

The World Organisation, based as it is on the principles of the equality of States and of mutual respect for territorial sovereignty, is itself bound, as is each of its members individually, to respect these basic principles. It is not, therefore, in a position to decide that part of a territory, with a well-defined sovereign, shall be subjected to an international regime without the consent of this territorial sovereign. It has no competence to make such a decision, which could only be made by the States concerned, including the legitimate territorial sovereign, within the framework of a multilateral treaty.

Moreover, there is no relation whatsoever between the necessity for establishing an international regime and the fact that a city is a holy one, even if, as in the present case, it is the cradle of the

three great monotheistic religions. Jerusalem is a city which, due to its numerous Holy Places, attracts Moslems and Christians, who have always met within its walls in mutual respect.

It is only Israel's claim to total hegemony over Palestine, to the building of a Greater Israel, to make of Jerusalem the capital of the New State,[3] that led some to believe that Jerusalem must be internationalised, if peace was to return to this region of the world, and especially to this high place of spiritual meditation.

2) THE INTERNATIONALISATION OF JERUSALEM INOPPORTUNE :

The internationalisation of Jerusalem is clearly not only an illegal solution, but one that is out of date and inapplicable in the present political context in the Middle East, for three basic reasons:

(a) In the first place, the attitudes to internationalisation previously adopted have been radically modified, as far as most States are concerned, by the aggression of June 5, 1967.

Admittedly the Holy See, through Pope Pius XII, called for internationalisation in 1948 and 1949, and recently too it has been considered that this principle, as elaborated by the Trusteeship Council on April 4, 1950, "could constitute a fair settlement of the question."[4]

But all the Arab States, however, divided they may have been on the subject in the past, are now unanimous in their rejection of internationalisation as a solution, because it would sanction aggression. Israel too, if, indeed, her attitude has to be mentioned, no longer supports the internationalisation of the Holy Places, which she proposed in a memorandum of May 15, 1950, because she has annexed the entire city of Jerusalem.

The third Israeli aggression of 1967 has made the Arab peoples conscious of their profound unity and rekindled their national sentiments; they cannot again accept that an illegal conquest be per-

3 - *Cf. supra,* p. 177-178.
4 - *Cf. Le Monde,* June 13, 1967.

petuated by the establishment of an international regime.

(b) In the second place, the United Nations has been unable to secure respect for the various internationalisation plans drawn up by its Organs, so liable have they all been to criticism.

This is true of the resolutions of November 29, 1947 and of December 11, 1948, as well as the third attempt in the resolution of December 9, 1949, by which the General Assembly called on the Trusteeship Council to draft a Statute for Jerusalem. The Council adopted the Statute on April 4, 1950.

Other resolutions have been adopted, such as that passed by the Special Political Committee on December 11, 1952. This resolution no longer spoke of internationalisation, confining itself to vague recommendations. It was rejected by the General Assembly.

In 1952, another resolution recommended direct negotiations "bearing in mind the objectives and the resolutions of the United Nations;" it received 24 favourable votes. It was interpreted as implying a renunciation of the General Assembly and as underlining the non-compulsory nature of U.N. resolutions.

All this goes to show that, if an international regime were to be adopted, and accepted by the Arab States—which is purely hypothetical—the United Nations would be neither able nor willing to get it respected.

c) But the Arab States cannot approve internationalisation, which would validate the occupation by force of an indisputably Arab city, and remove it from its natural sovereign.

An integral internationalisation of Jerusalem, set up as a *corpus separatum,* including Bethlehem and Nazareth, with guarantees of freedom of access to all pilgrims and foreign visitors regardless of nationality or creed, would only be conceivable if there had been discrimination in the past, i.e. before 1948.

It is unnecessary to recall that the Arab regime always functioned in the best interests of the different religious communities, ensuring equality among them in law and in practice, as well as mutual respect for one another's faith.

The idea of internationalising Jerusalem is an idle fancy, which

cannot possibly provide a final solution for the problem of the Holy Places. If, through weakness, this situation is allowed to come about, an entity which has been Arab for thousands of years will be fettered by a completely artificial status, and the natural rights of a community to be itself will be disregarded, a community of men who will never forget who they are, whence they came and where they wish to go.

This ignorance of a fundamental truth has led to the invention of legal structures which are undoubtedly ingenious, but so unreal that not even their foundation stone has been laid.

The entire international community owes it to itself to re-examine the problem of the Holy Places, starting with this elementary premise: Jerusalem, a Holy City, is also an Arab city.

Then, as in the past, Israel and Ishmael will be able to worship and to meet in a Jerusalem regained, and the Christians too, as the *Osservatore Romano*[5] hoped, will be able, "in the ever living reality of the Old Testament, to follow anew the earthly itinerary of the Redemption" along the paths trodden by the feet of the Son of Man.

[5] - Quoted by *Le Monde*, June 13, 1967.

Chapter II

The Palestine Arab Refugees

The Arab tragedy in Palestine was not confined to Israel's confiscation of a territory. Usurpation was accompanied by the forcible dispossession of the inhabitants and their expulsion from their country. At the present moment they number more than a million and a half persons, mainly women and children, both Moslems and Christians, cast on the roads by an unjustified and concerted action, aimless, without resources and deprived of their natural home. "The refugees," said the Director of U.N.R.W.A. before the United Nations in 1964, "are still living today in dire poverty, often under pathetic and, in some cases, appalling conditions. Despite the sustained efforts of U.N.R.W.A. and of the host Governments and other collaborating agencies, there are families who still live in dwellings which are unfit for human habitation... and who face starvation."[1]

Faced with these realities, the Zionists maintain that it is the Arabs who are responsible for the creation and the continuance of this problem. In their view, it is up to the Arabs to receive and to help the Palestine refugees and, eventually, to integrate them into their own peoples. Has not Israel, so runs the argument, absorbed all the Jews who came from different States, particularly those from the Arab World?

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1 - U.N. Document, A/6013, U.N.R.W.A., *Report* for period 1st July, 1964 to 30 June, 1965, pp. 4-5.

This view reduces the refugee problem to a simple transfer of populations. As we shall see, the only object of this reasoning is to increase the confusion, permanently kept alive by the Zionists, about the realities of the Palestine case. Furthermore, it evades the question of Zionist responsibility by passing it on the Arab countries.

In so doing, Israel gravely misrepresents both the degree and the nature of the obligations of the Arabs towards the Palestinians; on the one hand, she sets aside, and at little cost to herself, the international obligations she has accepted, and on the other, she passes in silence over the failure, for which she herself is primarily responsible, of United Nations action to achieve a satisfactory settlement of the refugee problem.

The whole Arab attitude can be summed up as a rejection of the political genocide of the Palestinians.

Israel's attempt to reduce the refugee problem to a simple transfer of populations, attractive though it may seem at first sight to reasonable men is, in fact, an example of Israeli Machiavellianism. Israel has indeed, assimilated Jews from, for example, the North African countries, but it is quite clear that this integration was not only desired and hoped for, but that it was basically positive, in that it aimed at the unification, at the ingathering of Jews dispersed throughout the world, to fuse them in a single crucible.

But can Israel be brought to admit that the integration of the refugees in Arab countries might have different consequences? The same remedy applied in two different situations will obviously not have the same results.

In the first case the object of the proposed integration is unity, but in the second it can only lead to the splitting up, to the disintegration of the Palestinian people.

Moreover, it should be recalled that a population transfer presupposes some agreement, albeit tacit, among the parties concerned. But it is well known that the refugees have but one desire, to return to their homes and not to go farther away from them for fear of losing all hope of recovering them.

The Palestinian people constitutes an entity. To split it up in

order to integrate it better, is purely and simply to dissolve it and remove it altogether from the international scene.

Once the usurpation is legalised, the Palestinian people eliminated and genocide accomplished, Israel, finally cleansed of all flaws, will leave it to the bar of History to condemn the Arab countries as unwitting butchers of a brother people.

I. — ATTITUDE OF ARAB STATES

Contrary to Zionist assertions, the Arabs have never failed to meet their obligations arising out of the solidarity which unites them with their Palestinian brethren. This concrete and effective solidarity is limited by the political considerations mentioned above: no state can assume responsibility for the political genocide of the Palestinian people by entirely integrating the refugees.

1) ARAB AID IS OF MANY KINDS:

In the first place, this aid aims at meeting the basic needs of the refugees. It stems from a natural human solidarity. Furthermore, the feeling of the Arab States of belonging to one community has led them to adopt measures calculated to guarantee protection and security for the refugees by the granting of the rights and privileges attached to citizenship.

A. – Material Aid

This is not the place to draw up a balance sheet of the very considerable material aid given by the Arabs. They have, either directly or through specialised international organisations, made a contribution, entirely out of proportion to their economic potentials, to meet the vital needs of the refugees (food, clothing, medical care, etc...).

This contribution is indisputable, and no one has tried to deny it. Reference to the relevant statistics, should this be required, will suffice to reveal the facts beyond any possibility of doubt.

B. – Legal Protection

The Arab States which have given refuge to the immense majority of the Palestine refugees have, since 1948, made a number of decisions with the object of giving them protection and at the same time solving the many legal, economic and social problems involved in the situation.

In implementation of these decisions, measures have been taken to facilitate acquisition by the refugees of the nationality of their host countries, along with the rights and obligations of the citizens of these countries. In this respect the example of Jordan, which has been followed by other Arab countries, may be taken as typical.

The Jordanian Ordinance No. 56 of 1949 makes the following stipulation: "All persons permanently resident in the territory of the Hashemite Kingdom of Jordan, who formerly held Palestinian nationality, are deemed to have acquired Jordanian nationality. Consequently, they have the rights and obligations of Jordanians."

The government incorporated the provisions of this Ordinance into the nationality law of March, 1954. As a result of this text, is considered a Jordanian:– any person who has acquired Jordanian nationality by virtue of ordinance No. 56 of 1949:– and any person who was a Palestinian citizen before May 15, 1948, and who, at the time when this law was promulgated, was a permanent resident of the Hashemite Kingdom of Jordan.

The Law of 1954 goes further than the Ordinance of 1949, in reducing the formalities required for the granting of Jordanian citizenship to the minimum.

Other States have similarly made it easy to acquire their nationality, and this has enabled thousands of refugees to acquire the rights and obligations of the citizens of those countries.

But Arab solidarity is limited by the political dimensions of the problem:

2) REFUSAL TO ASSUME RESPONSIBILITY FOR THE POLITICAL GENOCIDE OF PALESTINE:

As has just been explained, the Arab States have offered the Palestinians a legal framework favourable to their integration; *but the overwhelming majority of Palestinians, whose sole desire is to return to their country, have objected to this assimilation.*

As early as 1953, the Director of U.N.R.W.A., addressing the United Nations states: "The salient fact which continues to condition the mood of the refugees and to influence the policies of Middle Eastern governments on this question, is the desire of the refugees to return to their country."[2]

The regrouping of the Palestine Arab peoples is evidence of a refusal: *"A refusal, first of all, to crumble, to disperse, to disintegrate by being integrated into other States, even if they are sister states. By clinging together, the Palestinians have been able to spare themselves the 'diaspora' which the Israelis had destined for them. Although Arab Palestine no longer exists as a State, through the refugee camps it remains an organised body.*

But these camps are not merely the organised expression of the Palestinian nation; they are also the sociological form which the protest of this people against its expatriation and its expropriation has taken.[3]

This rejection by the Palestinians of any form of settlement of their situation which does not safeguard their inalienable rights and which does not lead to their return to their country, is a fundamental element in the attitude of the Arabs. Consequently, they are not satisfied with merely meeting the requirements of human solidarity, natural as it may be, even when to this is added the feeling of belonging to the same community.

These considerations mean that the responsibility of the Arab States towards the refugees involves their political obligation, that

2 - U.N. Document: GA/AH/356, November 22, 1953.

3 - Jean-Pierre Provins: "Les Camps de Réfugiés Palestiniens," in *Un jour ou l'autre Israël disparaîtra, Le Communiste,* édit., 42 Rue René Boulanger, Paris, p. 37.

is, their concern to take into account and to ensure respect for the legitimate rights of the interested parties themselves.

Thus the human solidarity incumbent upon the Arabs vis-à-vis every Palestinian refugee, is inevitably limited by their political responsibility towards the Palestinian people as a whole and towards history.

II. — RESPONSIBILITY OF ISRAEL

The baselessness of the Israeli argument of Arab responsibility is evident. By reversing the facts of the case, Israel attributes the unhappy fate of the refugees to inaction on the part of the Arabs. In so doing, she seeks to hide her own prime responsibility as the usurper of the homeland of these refugees. This has already been said. But what concerns us here is that Israel also wants to evade the obligations imposed on her by international law to settle this painful problem.

It is surely unnecessary to recall that the Zionist State bears the prime responsibility. This responsibility is twofold:

— On the one hand, Israel has failed to satisfy the conditions laid down by the United Nations for her admission to membership in the Organisation;

— On the other hand, her policy of discrimination against those other refugees of a different kind viz., the Palestinians who have remained in their homes, constitutes a flagrant breach of morality and of the principles firmly laid down by law and jurisprudence for the protection of minorities.

1) REPATRIATION OF THE REFUGEES, ABROGATING CONDITION FOR ISRAEL'S ADMISSION TO THE U.N.:

Normally, every Member State of the United Nations is bound by the obligations arising out of the Charter. It undertakes to respect them from the very first day of its admission.

Israel, on the other hand, was the only State to be admitted on condition that she carried out certain specific resolutions of the

General Assembly, more particularly those regarding the question of the refugees. This situation must be stressed. The heavy obligations with which Israel is burdened are in proportion to the exceptional nature of such a condition, which indicates without any doubt the prime responsibility of the Zionists.

A. – Right of the Refugees to Repatriation and Compensation

Faithful to the principles affirmed in Article 13 of the Universal Declaration of Human Rights,[4] the United Nations General Assembly has always recognised the right of the refugees to return to their homes. As early as 1948 the Assembly recommended that they should be permitted to do so "at the earliest practicable date" and that compensation should be paid for "loss of or damage to property."

These provisions were originally embodied in resolution 194 (III) of December 11, 1948 which was subsequently recapitulated in numerous later resolutions. Paragraph 11 of this resolution stipulates "that the refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those not choosing to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible."

At its fourth ordinary session in 1949, the General Assembly expressly reaffirmed the provisions of paragraph 11. A year later, it adopted measures to ensure that, when they were repatriated, the refugees should not be discriminated against "in law or in fact." Resolution 394 (V) of December 14, 1950, called "upon the governments concerned to undertake measures to ensure that refugees, whether repatriated or resettled, will be treated without any discrimination either in law or in fact."

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[4] - "Everyone has the right to leave, and return to, any country, including his own."

B. – Non-Fulfillment of the Abrogating Condition and Nullity of Israel's Admission to the U.N.

The General Assembly has established a direct relationship between the admission of Israel to the United Nations and the implementation of resolution 194 (III) mentioned above. This link is clearly expressed in the actual text of resolution 273 (III) of May 11, 1949 concerning the admission of Israel to the United Nations.

"Noting . . . the declaration by the State of Israel that it 'unreservedly accepts the obligations of the United Nations Charter and undertakes to honour them from the day when it becomes a member of the United Nations,

"Recalling its resolutions of 29 November 1947 and 11 December 1948 and taking note of the declarations and explanations made by the representative of the Government of Israel before the *ad hoc* Political Committee in respect of the implementation of the said resolutions,

"The General Assembly,

". . . . . ,

decides to admit Israel to membership in the United Nations."

Israel has not honoured the obligations she thus subscribed to before the largest possible body of public opinion and, what is more, on the occasion of her solemn admission to the United Nations. On the contrary, she has shifted her own responsibility for the Arab refugees to the lap of Arab countries.

Already in its resolution 394 of 14 December 1950, the General Assembly of the United Nations noted that no repatriation, no resettlement and no economic and social rehabilitation of the refugees had been carried out, and that the payment of compensation had not been effected. Since that date the General Assembly has on several occasions noted that the provisions of paragraph 11 of resolution 194 (III) concerning repatriation, have not been put into effect. Such censure, indicating the condemnation of Israel, has clearly not disturbed the Zionists at all.

Thus, Israel has not only pledged her responsibility for the

refugees, but has also released the United Nations from its obligations towards her, so that the Organisation would be perfectly justified in expelling her.

The close link established by the General Assembly in the same resolution, between the admission of Israel and the implementation of resolution 194 (III) of 11 December 1948, makes it possible to affirm *that it was the intention of the United Nations to confer upon the application of this resolution the character of an abrogating condition.*

By her systematic opposition to the return of the refugees, Israel has failed to fulfil the terms of this condition. By the same token she has stripped of all legality the resolution which admitted her to the International Organisation.

2) THE "INTERNAL REFUGEES"

The protection of minorities is solidly established in law. This is evidenced by a large volume of jurisprudence and the numerous recommendations of the General Assembly. Israel has subscribed to these resolutions; but has she also respected her undertakings?

Bullying, harrassing, destroyed homes, occupied lands, laissez-passers and barbed wire prove that she has not done so. Only one conclusion can be drawn from this: Israel does not respect her own pledges and, in short, treats the Palestinians who remained behind *as nothing more nor less than a new kind of refugees, second class citizens stripped of their rights, internal refugees.* Living in ghettoes, they are condemned to exile in their own country.[5]

A. – Racial Discrimination

Before the aggression of June 5, 1967, 250,000 Palestinian Arabs still lived in Israel. This minority is discriminated against.

The Arabs are deprived of the right to equal pay for equal work; Their opportunities for education and work are restricted.

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[5] - On their situation see also the development of this question, *supra,* pp. 75-82.

For the last 20 years, the Arabs living in Israel have been restricted to "Zones" and live under martial law.

They are subjected to a system of military permits which severely restricts their freedom of movement. These permits are issued only by the military authorities or by the police.

The mere fact of their moving from one place to another inside Israel leads to the Arabs being regarded as absentees; in this manner their properties have been confiscated. Furthermore, the arrival of every wave of new immigrants results in the expulsion of the inhabitants of yet another Arab village and their replacement by these immigrants.[6]

Like the racialist legislation in South Africa, that of Israel gives the head of the Israeli army the right to arrest and imprison any Arab for a whole year without having to give any reasons for his detention. Frequent resort to this legislation explains why hundreds of Arab youths are behind bars in Israeli gaols. In matters of detention, the Arabs have no real guarantees.

It should also be observed that acts of violence are frequently committed against the Arab minority. These acts are sometimes obviously deliberate massacres with the object of arousing panic and forcing the Arabs to flee the Jewish zone, or to leave Israel for good.

B. – Israel's Policy of Discrimination Constitutes a Breach of International Law

International law prohibits all forms of discrimination against

[6] - *cf. supra,* pp. 69-74. "Israel," according to *Les Cahiers de l'Histoire,* (*op. cit.,* October-November, 1967, pp. 71-72,) "was in no hurry to integrate the refugees and adopted a series of measures to keep them separate, the principal measure being the *Absentee Law,* which deprived fugitives of their property. After the war, the term "Absentee" was extended to include all those who, for some reason or other, were not in their homes. Finally, in 1953, a law authorised the State to nationalise lands for public purposes; 70,000 hectares of Arab lands were thus expropriated to be distributed among *Israeli* settlers. *During this whole period Israel did not show good will by attempting to settle the problem of the refugees...* For the majority of them there was no hope for the future. The sons and grandsons of the refugees have no other assets than the rights of their fathers over Palestine."

minorities in a State. This principle has been admitted both by decisions of international courts and by conventional law.

(a) *Application of the principle of non-discrimination by the courts:*

The Permanent court of International Justice has formally recognised the principle of racial and religious non-discrimination.

In its opinion of February 4, 1932 *(treatment of Polish nationals in the territory of Dantzig)* the P.C.I.J. prohibits, in fact as in law, all discrimination based on nationality, racial origin, or language. In another opinion of February 6, 1935 on *schools in Albania,* the P.C.I.J. states that "minority nationals should be on a footing of perfect equality with the other nationals of the State." The Court adds that there is "an obligation to ensure to social groups incorporated in a State whose population is of a race, religion and language distinct from theirs, the possibility of peaceful existence and friendly collaboration with that population..."

Certain implications arise out of this principle.

All minorities are entitled to protection of life and the fundamental freedoms (recognition of equality in matters of civil and political rights.)[7]

Conventional law has also sanctioned this principle.

(b) *Confirmation of the principle of non-discrimination by conventional law and by the United Nations:*

Already acknowledged in numerous bilateral treaties, the principle was recognised by the League of Nations Covenant, which specified a procedure for the protection of minorities.

The peace treaties of 1947, also, admitted and recognised this principle.

As regards the United Nations, Article 7 of the Universal Declaration of Human Rights lays down identical principles (equal protection by law of minorities; principle of non-discrimination.)

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[7] - *Cf.* P.C.I.J., 26 April, 1928, *Case of Minority Schools in Upper Silesia;* P.C.I.J., opinion of May 15, 1931 on *Access to these same Schools;* P.C.I.J., opinion of April 6, 1935 on *Minority Schools in Albania.*

On 20 November 1963 the General Assembly of the United Nations unanimously (therefore, including Israel) adopted a resolution on the elimination of all forms of racial discrimination. Basing itself primarily on general principles, the Assembly regards "discrimination among human beings for reasons of race, colour or ethnic origin as a repudation of the principles of the United Nations Charter." Then, proceeding to the sphere of its practical application, the resolution contemplates the adoption of specific concrete measures with a view to putting an end to all forms of racial discrimination.

Furthermore, on December 21, 1965, the General Assembly adopted an "international convention on the elimination of all forms of racial discrimination." Israel, which adhered to this convention on March 7, 1966, is bound by this instrument, Article 2 of which stipulates that "the States parties to the convention condemn racial discrimination and undertake to follow, by all appropriate means and without delay, a policy leading to the elimination of all forms of racial discrimination..."

There can be no doubt that Israel violates the provisions of the convention to which she has adhered. In particular, she does not respect Article 5, i.e., the right to equal treatment before the courts and all other organs administering justice; the right to personal safety; the right to freedom of movement, and, finally, the right to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration.

In conclusion, Israel's discriminatory and inhuman treatment of what has become the Arab minority in Palestine, constitutes a breach of positive international law, and especially of the convention on the elimination of all forms of discrimination, to which Israel has subscribed.

III. — JEWISH EXPANSIONISM INCREASES UNITED NATIONS RESPONSIBILITY

In pursuance of her expansionist policy, Israel encourages

Jewish immigration, and systematically refuses to repatriate the refugees.

The unhappy lot of the Arab minority is consistent with such a policy. The only object of the discrimination practised against the members of this minority is to speed up their departure, so as to make it easier to settle an ever-increasing number of Jewish immigrants.

Always consistent, Israel opposes every measure which runs counter to her expansionist policy, and in particular the U.N. recommendations for the repatriation of Palestinians and the treatment of the Arab minority in accordance with law and morality.

The United Nations has, indeed, evinced a sincere desire to aid the refugees, but this good intention has not been followed by decisive action. In its humanitarian and charitable endeavours, as well as in its political action, the United Nations, has been conspicuously inadequate.

1) HUMANITARIAN AND CHARITABLE MEASURES:

To give a practical application to its intentions, the United Nations established the United Nations Relief and Works Agency for Palestine Refugees in the Near East (U.N.R.W.A.) by resolution 302 of 8 December 1949, reaffirmed by other resolutions, which extended the Agency's mandate. A successor to the United Nations Relief Office for Palestine Refugees, U.N.R.W.A. has striven to carry out the economic reinstatement of the refugees amidst a multitude of political and material difficulties. Its task is to make international assistance available for the Arab refugees through direct relief or through a policy of works programmes, aimed at the rehabilitation of the refugees without prejudice to their rights to repatriation and compensation.

The fact remains that, in 1966, the number of refugees registered with the Agency was about 1,400,000, of whom 900,000 lived in camps located in Jordan, Syria, Lebanon and in the Gaza Strip.

Apart from the United Nations, certain charitable organisations

have given aid to the refugees (food, clothing, etc...) with the help of U.N.R.W.A.

But in spite of all its efforts, U.N.R.W.A. has been able to achieve only very limited results, because of the inadequacy of its financial resources. Daily food rations distributed among the refugees amount to barely 1,500 calories per person in the summer and 1,600 calories in the winter. They do not include meat, fresh vegetables or fruit, and are below the required minimum for an individual.

In other fields, the results achieved by U.N.R.W.A. are no less limited. Efforts made to provide education and vocational training for young refugees are definitely below actual requirements.

Furthermore, the events of June 1967, with their disastrous consequences, have greatly increased the difficulties of U.N.R.W.A., and put it in the same critical position as that which almost destroyed it a few years ago.

Besides, hundreds of thousands of needy refugees, who for one reason or another are not entitled to relief by U.N.R.W.A., live in tragic insecurity. For them, as for the refugees who do receive assistance, "continued efforts aiming at enabling them to become economically self-sufficient," as the Director of U.N.R.W.A. recommended, have been deplorably unsuccessful.

What does the future hold in store? There is no doubt that the deadlock which has been reached in finding a solution to the refugee problem can only engender violence in this part of the world. The only solution possible, in equity and in law, would be the return of the refugees to their homes. It is monstrous that one million Palestinians should still be living in tents under conditions wholly unacceptable by the normal standards of human life, while the Zionist movement continues to issue pressing appeals for new immigrants which it hopes to uproot from the countries of their birth.

2) POLITICAL FAILURE OF THE UNITED NATIONS:

In 1947, the United Nations Organisation gave its approval

to a Partition Plan for Palestine. This being the case, it clearly has a share in the responsibility for the subsequent disturbances which compelled the Arabs to flee from their homes.

If the United Nations has obligations of a moral nature towards other categories of refugees, it owes Arab victims more than a mere protection in principle. Besides, the General Assembly has recognised the right of the refugees to repatriation and to compensation for loss of or damage to property.

The General Assembly resolution of 29 November 1947 stipulated guarantees for the protection of Arab property rights and forbade all encroachments upon these rights.

Moreover, resolution 194, of 11 December 1948, stipulated that *"the refugees wishing to return to their homes ... should be permitted to do so at the earliest practicable date."*

This same resolution instructed the Conciliation Commission to facilitate the *repatriation,* resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief Agency for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.

The aim of this resolution was to placate both parties without finding a solution to the problem. Thus, the United Nations appointed the Conciliation Commission as a trustee over the rights and properties of the refugees, and requested it to facilitate for them, in the name of the United Nations, the exercise of all their rights.

This task is confirmed by paragraph *C* of the resolution of 14 December 1950, which stipulated that the Conciliation Commission should continue consultations with the parties concerned regarding measures for the protection of the rights and property of the refugees.

Israeli legislation designed for the impounding of the property of Arab refugees is based on the assumption that they are "absentees." But they cannot properly be regarded as absentees—theirs is an enforced absence, imposed on them by Israel, in contravention of United Nations resolutions.

Not one of these resolutions has been implemented by Israel.

The same is true of resolution No. 99, adopted by the *Security Council on 17 November 1950,* which requested the Mixed Armistice Commission to give urgent attention to the Egyptian complaint concerning the expulsion of Palestinian Arabs, and called upon both parties to give effect to the decisions of the Commission regarding the repatriation of these Arabs.

This resolution of the Security Council, like others, has remained a dead letter.

Under these circumstances, are we not justified in asserting that United Nations action in favour of the refugees, which is an obligation resulting from the Partition resolution of 1947, has met with a serious reverse?

Every year, the refugee question is listed on the agenda of the United Nations, and every year the International Organisation reaffirms the rights of the refugees.

However, such good will is not sufficient. Action must be taken to make it possible to implement the resolutions, by providing effective sanctions for them. The absence of such sanctions against Israel has been the cause of the United Nations' most injurious failures, and has played into the hands of Zionist expansionism, of which it is the refugees who have been the victims.

Chapter III

Diversion of the Jordan Waters by Israel

The name Jordan is given only to the section of the river below Lake Huleh, which lies near the northern extremity of the lands occupied by Israel, but its waters come from four streams:

— The Hasbani, which comes from Mount Hermon, with its source and the greater part of its course in Lebanon.

— Running parallel to this is the small stream, Nahr Bureighit, which rises in the high Lebanese plateau of Marjeyoun;

— The two other streams are Syrian, and both have a shorter course than the Hasbani: the Banyas, whose flow is almost equal to that of the Hasbani, and the Nahr-el-Dan which has a flow almost double that of the Hasbani.

After leaving Lake Tiberias, situated in territory occupied by Israel, the Jordan resumes its course for a while in Israeli-held territory, and then flows through the Kingdom of Jordan until it finally reaches the Dead Sea.

The principal tributary of the Jordan, the Yarmuk, rises in the Jebel Druse in Syria. It then forms, along with the railway line, the frontier between Syria and the Kingdom of Jordan, as far as the Zone which was demilitarised by the Syria-Israel Armistice Agreement of 20 July 1949.

Thus, due to the fact that its sources and those of its tributaries lie in different countries, and also due to the fact that its waters irrigate that part of Palestine occupied by Israel and certain Arab

countries, the Jordan is unquestionably an international river.[1] Its regime and the use of its waters which are, in the main, Arab, are subject to the rules of international law governing this matter.

The diversion of the Jordan waters does not constitute a new problem in international law; nor is it true to say that we are concerned here with a very particular problem. The river flows through the territory of several countries, including that of the Kingdom of Jordan and that occupied by the Israelis, and therefore the general rules of international fluvial law are applicable to it.

What is peculiar about this particular case is not so much the problem of diversion as such, as its application to the juridico-political aspects of the Palestine question. It is because of the relations between the Arab States and Israel that the problem acquires a somewhat singular character, not hitherto mentioned by either publicists or international judicial precedents. From this point of view, it seems clear that Israel, in its attempts to divert the Jordan, has violated the provisions of international law concerning the status of rivers in general, and, at the same time, the territorial integrity of neighbouring States.

What we must do, therefore, is to consider the problem of the territorial competence of the State in relation to positive international law and that of the utilisation by riparian States of the waters of an international river. This, in effect, amounts to formulating the following question: *What is the territorial sovereignty of the State over international rivers?*

The principle is that the State is competent to utilise, in its own territory, the rivers which flow through it, and to undertake all works necessary for such utilisation. The problem is to discover if the State's right, in its own territory, is subject to limitations, or if it is an absolute right, which the State can exercise regardless of the consequences for other States upstream or downstream.

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[1] - On the concept of *international river,* see European Center of the Carnegie Endowment for International Peace: *International Rivers* (reports and proceedings of the Conference on International Law, Lagonissi, Greece, 1966), Geneva, 1967, and *infra,* note 10.

In practice, the problem of the diversion of river waters has given rise to a number of controversies: does the right to use the waters remain when such use could cause damage to one of the riparians as a result of work on the river or of the use of the river on the territory of another riparian State?

The fundamental rule in this matter is that the State through which part of a river flows should, in the exercise of its sovereignty over that section of the river, take into account the effects which the use of its waters could have on the other riparian countries.

Thus, it should not change the natural course of this river, or hinder its flow, in a manner which could have detrimental effects on the other countries concerned. This rule, of capital importance for the agricultural and industrial utilisation of river waters, has been evolved by legal writers and by court decisions in the fields of both internal and international law.

I. THE GENERAL REGIME OF INTERNATIONAL RIVERS APPLICABLE TO THE JORDAN WATERS

(1) OPINIONS OF JURISTS:

It is a fact that, until these last few years, international law relative to the industrial and agricultural utilisation of international rivers and streams was in a very rudimentary stage. General treatises on international law touched on the problem only superficially. The majority of legal writers did no more than to affirm the right of riparian States to a just exploitation of river waters, or to reserve the right for a State injured by abusive utilisation of a stream by another riparian, to restoration of the *status quo ante,* or to damages, without stating specifically wherein lay the abuse, and to require the conclusion of an agreement between the riparian States regarding the utilisation of river waters, for exploitation of river waters always has repercussions on other States. Only Fauchille devotes several pages to these questions.[2]

[2] - G. Sauser-Hall: *Industrial Utilisation of International Rivers; Recueil des Cours de La Haye,* 1953, pp. 471-586. *Cf.* also the confidential study made by Servette on *The Legal Aspects of the Question of the River Jordan* and published as a U.N. document.

More recently, greater interest has been shown in a separate development in the rules of international law concerning industrial and agricultural utilisation of river waters. Max Huber and Oppenheim devoted themselves to it. Then followed several works by the Institute of International Law, the International Law Association, the United Nations Organisation, and various declarations, including the Geneva one in 1923, the Montevideo one in 1933, and finally that of the Electric Emergy Commission of the E.C.E.

A. – The Writings of Publicists :

Merignhac was the first to give an opinion on the sovereignty of a plurality of States over rivers. In his *Traité de droit international public,* he says: "When the international river flows through the territory of several States, it is subject to the rights of ownership and of sovereignty of each such State; in the exercise of these rights each State must naturally take into consideration the rights of the others." Merignhac seems to base his stand on the decision taken by the Provisional Executive Council in regard to the Escaut: "Rivers are the common and inalienable property of all the countries through which their waters flow; a nation cannot, without causing injustice, claim the right to occupy exclusively the course of a river and to hinder the neighbouring peoples who live on its upper banks from benefiting from the same advantages."[3]

Max Huber takes up the same idea, and criticises states which take their stand on territorial sovereignty to harm the economic interests of other countries, or to secure unreasonable advantages. He considers that each state is free to do what it chooses with its own territory, and exercises its authority solely over this territory; it has no right to act in a foreign territory nor the obligation to submit to the acts of a foreign State. According to this writer, therefore, are considered as illicit all establishments which impair

[3] - Merignhac: *Traité de droit public international,* vol. II, paragraph 176.
[4] - Max Huber: in *Schweizerische Wasserwirtschaft und internationales Recht,* Vol. III, 1910-1911.

the natural course or the artificially constituted flow of the waters of the injured State and the acquired rights over its territory.

Fauchille, in his *Traité de droit international public,* examines this problem at length.[5] He asserts, first of all, that the riparian State is the sovereign owner of the river, but cannot undertake any work which could change the course of the river or obstruct its free flow.

"Industrial and agricultural exploitation of a river by a riparian which, aside from navigation, cannot cause damage to other States when that exploitation takes place on a national river, is, on the contrary, capable of causing harm to those other states when it takes place on an international river; for there are several States alongside the river which all have the right to make use of its waters for industrial and agricultural purposes, and diversion or change in the flow of these waters by an upper riparian must necessarily, and to a greater or lesser great extent, cause inconvenience to the lower riparians in the use which they can make of these waters." Neighbourhood carries with it certain obligations, and imposes certain restrictions on the exercise of the right by States. Starting from this idea, Fauchille arrives at the following conclusion: "*A riparian can never change the point at which the river enters the territory of another riparian State without the consent of that State, for such a change is tantamount to a modification of the territory itself of that State.*" So, in Fauchille's view, neighbourhood and consent are the two fundamental rules regarding relations among States riparians of an international river.

The same view is confirmed by other writers such as Oppenheim and Lauterpacht.[6] They admit that every State has sovereign rights over its fluvial domain within its own frontiers, but maintain that a riparian State has no right to carry out works on the river prejudicial to other States.

In short, one of the best established doctrines in international

[5] - Fauchille: *Traité de droit international public,* 1925, vol. I, pp. 422-505.
[6] - Oppenheim - Lauterpacht: *International Law,* London, 1955, 8th edition, vol. I, pp. 176-177.

law denies to the State the right to modify the natural condition of its territory to the detriment of another State. It may not block the natural course of the river, or divert it if it flows naturally from its territory to that of another State, and may not utilise the river in a manner injurious to neighbouring States, or liable to hinder them from making normal use of the river inside their territories.[7]

This doctrine is well expressed in the opinion of Professor Lauterpacht: "The water flow of any international river cannot be subjected to the authority of one of the States to modify the natural flow of a river which passes through several States." This modification by the state is prejudicial to its neighbours and is, for that reason, forbidden by international law.

B. – Work of International Conferences on the Utilisation of River Waters :

(a) *Work of the Institute of International Law:*

At its meeting held in Madrid in 1911, the Institute observed that "States riparians of the same river are in a state of permanent physical dependence vis-à-vis each other, which excludes all notion of complete autonomy of each of them over the section of the natural flow falling under its sovereignty." In short, there is interdependence between States which are located on the banks of th same river. No State can, without the consent of the other, and in the absence of a special and valid legal title, bring about, or allow to be effected by individuals, companies, etc..., changes in a waterway prejudicial to the territory of the State on the other bank. On the other hand,

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[7] - H. Oppenheim, *Public International Law,* edited by Lauterpacht 8th edition, 1955, p. 474, "The flow of international rivers is not within the arbitrary power of one of the riparian States, for it is a rule of international law that no State is allowed to alter the natural conditions of its own territory to the disadvantage of the natural conditions of the territory of a neighbouring State. For this reason, a State is not only forbidden to stop or divert the flow of a river which runs from its own territory to a neighbouring State, but likewise to make such use of the water of the river, as either causes danger to the neighbouring State or prevents it from making proper use of the flow of the river.

neither of the two States can, on its own territory, make use of the water, or allow it to be used, in such a manner as to seriously hamper its exploitation by the other State or by individuals, companies, etc...

The Institute then arrives at the following conclusion: "The point at which the river flow crosses the frontiers of two States, either naturally or since time immemorial, cannot be changed by the works projects of one State without the consent of the other."[8]

While recommending the establishment of joint and permanent commissions by the states interested in the exploitation of international rivers, the Institute has emphasised the necessity for the consent of the States directly concerned in such utilisation which, in other words, means that the States have only limited sovereignty over these waterways.

The Andrassy report, submitted to the Institute of International Law at its Salzburg meeting in 1961, asserts the obligation to enter into negotiations with a view to reaching an agreement within a reasonable time. Failing this, "the State is free to proceed with the work at its own responsibility while remaining subject to the obligations resulting from provisions 2 and 4 (i.e. the substantive rules listed above governing the utilisation of river water.)[9]

(b) *The Montevideo Declaration of 1933:*

This declaration asserts the right of exploitation on one bank, as long as such exploitation does not prejudice an equal right on the other bank. This implies the notion of a certain limitation on the right of a State over its territory, the aim of such limitation being to safeguard an equal right for the other State. This declaration

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[8] - *Annuaire de l'Institut,* 1911, vol. 24, p. 365.

[9] - See the Institute's resolution of 11 September 1961, adopted by 50 votes, with none against and one abstention, in *Annuaire de l'Institut de droit international,* 1961, vol. 49, II, pp. 370-373. *Cf.,* Jean-Victor Louis: "Les Eaux du Jourdain," *Annuaire français de droit international,* 1965, p. 856, and Carnegie Endowment: *International Rivers, op. cit.,* p. 73 sqq.

also stipulates that there must be no modification in the regime of a river likely to be prejudicial of riparians without their consent.

(c) *General Principles Formulated by Other International Bodies:*

In 1952, the Economic Commission for Europe published a series of conventions regarding the utilisation of waterways of common interest for purposes other than navigation. These conventions applied the following three principles:

— Prior joint study of technical aspects of the works, with a view to deciding how river waters may be best utilised;

— Respect for rights acquired by other riparian States or, alternatively, payment of compensation;

— Establishment of joint commissions for the solution of problems arising out of new development schemes.

The International Law Association, during its Conference in Helsinki in August, 1966, adopted the "Helsinki Rules for the utilisation of the waters of international river basins," which are the fruit of twelve years of study of this subject. The conclusions reached are as follows:

(1) An international river basin is one which, extending over the territory of two or more States, receives water which flow towards a common terminal point.[10]

(2) A State must exercise its rights over international waters within the framework of its jurisdiction and in accordance with the principles stated herafter.

(3) Each State is entitled to an equitable share in the waters of an international river basin.

(4) The State is responsible, under international law, for all public or private acts modifying the existing regime of the waters of a basin to the detriment of another State.

(5) In accordance with the general principle enunciated in paragraph (3), the States sharing an international river basin

[10] - The geographical notion of "basin," more rational than that of "waterway," henceforth replaces the latter in juridical studies relating to non-maritime international waters. From this derives the principle that, in all development projects, the basin is considered as a unit. See *infra,* paragraph 2.

should, in settling their disputes, take into consideration all the factors inherent in each particular case, such as the right of each State to a reasonable use of the water; the extent of the dependence of each State upon the waters of the international basin; the volume of water contributed by the territory of each State to the total volume of the basin's waters; the social and economic advantages accruing to all the States concerned; the agreements already existing between the States concerned; the rules already in force regarding the sharing of the waters.

(6) A State which intends to embark on new projects, or make changes which might affect the utilisation of the waters by another State, must first of all consult with that State. If agreement cannot be reached through such consultation, the States concerned should seek the advice of a technical commission and if this does not lead to agreement, they should resort to arbitration. Work unilaterally undertaken, without prior notification and without agreement among the parties, does not confer any right upon the State which carries out the work.

In short, the consensus of opinion among jurists is that territorial sovereignty does not confer on any State the right to divert an international waterway to the detriment of other riparian States.

(2) COURT DECISIONS:

The rules listed above have been confirmed by the practice of the courts, both domestic and international.

A. – Decisions by Domestic Courts:

Only a few decisions delivered by various United States Courts in disputes between two States of the Union will be referred to. Although rivers which flow through two or more States of the Union cannot be considered as international rivers, nevertheless the decisions rendered are significant, in that they put forward solutions which are similar to those advanced by international

tribunals [11]

B. – The Practice of States and International Judicial Precedents :

An old, solidly based and constant international practice applies the following principles:

(a) A State has no right to embark within its territory on works projects on its rivers, which might prejudice the utilisation of their waters by other States, without prior consultation and without attempting to negotiate reasonable solutions with them;

(b) A State cannot carry out work on a waterway in such a manner as to cause damages to the territory of another riparian, for example, by causing floods or by reducing to any considerable extent the volume of water utilised by the State downstream, etc...

(c) Finally, a State has the possibility of restituting a volume of water equivalent to that which it used.

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[11] - Thus, in the case between the State of Kansas vs. the State of Colorado, decided in 1907, the U.S. Supreme Court rejected Colorado's claim to use all the waters of the river in its own territory.

In the dispute between Connecticut and Massachussetts, the Court held, on 24 February 1931, that unless Connecticut proved damage to substantial interests, it could not maintain the action against Massachussetts: the Court drew a distinction between real and presumptive damage; likewise it distinguished between substantial damage and minor damage.

In the case of the State of Wyoming vs. the State of Colorado, 1922, the U.S. Supreme Court held: "The Contention of Colorado that she, as a State, rightfully may divert and use as she may choose the waters flowing within her boundary in this interestate stream, regardless of any prejudice that this may work to others having rights in the stream below her boundary, cannot be maintained." The Court applied, in this case, the principle of "prior appropriation," viz. that a riparian State is entitled to as much of the waters of the river as it was actually using for irrigation prior to any claim by another riparian State.

The attitude of the American Court does not in any way differ from decisions by other national courts, particularly in Germany, where on 18 June, 1927 The Supreme Court, in a dispute regarding the Danube, held on that "no State has the right to cause injury to the interests of another State by the use it makes of the waters of a natural waterway."

The Swiss Federal Court reached the same conclusion (Decision of 12 January 1878 in the dispute between the Canton of Zurich and Schaffhausen.)

The very large number of treaties and conventions[12] sanctioning this international practice totally reject the "Harmon Doctrine," expounded in the dispute between the United States and Mexico, which, in a nutshell, is an affirmation of the principle of absolute territorial sovereignty.[13]

It can be definitely stated that international practice forbids a State from in any way prejudicing the territorial integrity of another, or making such use of its own territory as could cause injury to its neighbours.

Decisions by international tribunals also clearly follow this general practice. Thus, an opinion, delivered on 28 June 1937, by the Permanent Court of International Justice, concerning the diversion of the waters of the Meuse, considered as unlawful modifications in the regime of waters effected without agreement between Belgium and the Netherlands.[14]

The problem of the Jordan waters thus constitutes a violation by Israel of the general principles of international law governing international rivers in general, coupled with an attack upon the territorial integrity of Arab States.

II. DIVERSION OF THE JORDAN WATERS A VIOLATION OF INTERNATIONAL LAW BY ISRAEL:

The diversion of the river Jordan by Israel to her own advantage, without the consent of riparian Arab States or without due consideration for Arab economic interests, is an act contrary to international law, an encroachment on the legitimate rights of the Arabs, and a dangerous precedent in international relations between countries co-riparians of international rivers.

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12 - See in particular, United Nations: *Legislative Texts and Treaty Provisions Concerning the Utilisation of International Rivers for non-Maritime Purposes:* U.N. Legislative Series, ST/LEG/SER.B. 12,) an imposing volume of 934 pages, providing innumerable examples of the practice of States.

13 - This concept was, nevertheless, expressly denounced by a decision of the U.S. Supreme Court on 14 January, 1929.

14 - Sauser-Hall: *op. cit.*

By her intention of digging a canal and building aqueducts to carry the Jordan waters to the Negev, Israel is violating the general principle of international law according to which a river basin is a natural and indivisible unit. The Israeli projects aim at transporting the waters of the river from its basin to a place situated outside the basin, which would result in considerably reducing the volume of water remaining in Arab territory.

The illicitness of the diversion lies in the fact that Israel, in modifying the natural course of the river, causes substantial prejudice to Arab States. Israel is violating the principles according to which each riparian State is entitled to an equitable share in the waters of an international river.

Arab counter-plans are thus to be considered as reprisals proportional to the Israeli action.

Israel's breach of the law is aggravated by violation of acquired rights, that is, in the present case, by her disregard of the Franco-British treaties of 1920-1923 and of 1926,[15] which respected the frontiers between Syria and Palestine, and clearly stipulated that the rights of the inhabitants in the use of the Jordan waters would be safeguarded. Those who look upon Israel as a State should remember her violation of obligations arising from international treaties.

1) VIOLATION BY ISRAEL OF RIPARIAN RIGHTS:

The three rules mentioned above, and sanctioned by international practice, as regards the utilisation of international rivers, are not respected by Israel.

But the problem of the necessity for prior consent arises here in a very special manner, because of the non-recognition of Israel by the Arab States and of the breakdown, since 1955, of all attempts aiming at mediation, conciliation or compromise, relative to the use of the waters.[16]

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[15] - *Cf.* United Nations: "International Rivers...," *op. cit.*

[16] - *Cf. infra,* pp. 237-238, on the subject of the discussions which took place before that date among the parties concerned, and of Zionist lack of good will.

It is, of course, difficult to establish contact between Israel and her neighbours, but this does not mean that in the case under discussion prior consent is to be excluded. Israel was acting in bad faith when she unilaterally decided the future of the Jordan waters without taking into account the interests of the riparians, although the Jordan is an international river two thirds of whose waters come from Arab countries.

The Israeli project is, therefore, contrary to international law.

In diverting part of the Jordan waters towards the Negev, Israel is arrogating to herself rights over a river of common interest without the approval of the other interested countries, which is indispensable in such cases.

The pumping of water carried out by Israel in Lake Tiberias, increases the salinity of the Lake and makes its waters unusable for irrigating lands downstream. Serious damage will therefore be caused to Arab lands. The Kingdom of Jordan will have to give up its present cultivation of both banks of the river. In this way nearly 8,000 hectares may well be withdrawn from Jordanian economic life overnight, causing harm to about 20,000 persons.

On the other hand, the lowering of the level of the Dead Sea will be prejudicial to Jordan's exploitation of her mineral resources.

Thus, there can be no doubt that this Israeli project is prejudicial to Jordanian interests. It is likely to deprive the Arabs living in the region of their minimum needs, to the benefit of new Jewish immigrants.

With 77% of the waters of the Jordan coming from Arab states, it is only natural that they should be concerned over Israeli decisions to alter the natural flow of the river.

In any case, Israeli practice has been implicitly condemned by the Security Council, in its resolution of October 1953 on the complaint by Syria against Israel concerning the works undertaken on the western bank of the Jordan *and, what is more, in the demilitarised zone.*

The Security Council has stated its opinion on the works

carried out by Israel in a zone in which sovereignty remains reserved by the Armistice Agreements. In proceeding with works on the Jordan waters, Israel has violated both the Armistice Agreements and the provisions of Article 2 of the United Nations Charter. But the weakness of the resolution lies in the fact that the diversion itself was not expressly condemned by the Security Council, which confined itself to adopting temporary measures, in accordance with Article 40 of the Charter.

In any event, by virtue of the Anglo-Saxon concept of "riparian rights," the riparian State (the injured State) has the right to veto any project likely to cause damage to it. This State can therefore object to all change in the *status quo*. An application of this view can be found in the dispute between Bolivia and Chile over the Rio Mauri in 1921.[17]

Israel cannot justify her diversion of the Jordan waters to her advantage by the pretext of non-cooperation by the Arab States. In the first place, it must be emphasized that, before 1955, discussions between the parties concerned, which took place through various intermediaries, regarding the utilisation of the river, were dominated, and then definitely jeopardised, by a disconcerting lack of good-will on the part of Israel which, in order to increase her share of the waters, roundly affirmed the necessity of feeding a population which was constantly growing, as a result, mainly, of her policy of "The Return" of all Jews to Israel. In view of such claims, and in anticipation of the settlement of 14 million Jews in Palestine, it is quite evident that the Zionists would have not only to seize the head-springs and divert all the waters of the Jordan, but also annex all the neighbouring Arab States.[18]

Furthermore, there seems to be every reason for saying that, according to the concept of "riparian rights," the refusal of a co-riparian to cooperate, with a view to reaching agreement within a reasonable period, does not justify violation of the rules concerning

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17 - Sauser-Hall: *op. cit.*

18 - *Cf. Les Cahiers de l'Histoire: Israël et pays arabes au Moyen-Orient depuis 1948, op. cit., pp.* 18 and 73-75.

the necessity to respect his right to an equitable share in the river waters. The International Law Association adopted the same view at its meeting in New York in 1958.

2) VIOLATION BY ISRAEL OF ACQUIRED RIGHTS:

This whole point revolves around one question: what is the value of the treaties on Palestine concluded by France and Great Britain with respect to the Jordan in 1920-23 and 1926.

The Armistice Agreements establish the principle of respect for required rights when they assert that "no military or political advantage should be gained under the truce ordered by the Security Council ... and that no provision (of this Agreement) shall in any way prejudice the rights, claims and positions of either Party hereto in the ultimate peaceful settlement of the Palestine question."[19]

By diverting the Jordan waters in violation of the treaties of 1920-1923 and 1926, and in violation of the Armistice Agreements, Israel is impairing Arab acquired rights.

The validity of these treaties, and their applicability to Israel, was defended in the Security Council by General Bennike, Chief of Staff of the U.N. Truce Supervision Organisation. These agreements concerning the utilisation of an international waterway remain in force vis-à-vis the successor "State," in this case Israel, by virtue of the rules relative to State succession. For in this field, respect for required rights is recognised by the practice of States as well as by court decisions.

But Israel is clearly unwilling to accept a proportional and equitable sharing of the waters, to respect acquired rights, or to pay just and equitable compensation to the injured Arab States. By this refusal, Israel adds further illegalities to her already unenviable record.

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19 - Jean-Victor Louis: *op. cit., Annuaire français de droit international,* 1965, p. 857.

Chapter IV

The Gulf of Aqaba and the Straits of Tiran

Israel has regarded the ban imposed on the passage of her ships[1] through the Straits of Tiran and the Gulf of Aqaba as a "casus belli."

In fact, Israel's right of passage does not exist and has never existed; for international law could only be invoked by the Zionists if they were *riparians* of the Gulf of Aqaba or if these waters (those of the Gulf and of the Straits) were waterways for international navigation.

In the case in question, neither of these two conditions is met.

I. LEGALLY, ISRAEL IS NOT A RIPARIAN OF THE GULF OF AQABA:

(1) ISRAEL HAS OCCUPIED A POINT ON THE GULF OF AQABA IN VIOLATION OF INTERNATIONAL LAW:

The Partition resolution which gave the Negev to the "Jewish State" cannot constitute a legal title in favour of Israel. This resolution is in fact null and void;[2] what is more, it has neither been accepted nor applied by the Zionists themselves, who have only observed the part that suited them, i.e., the principle of the creation of a State. The remainder they have disregarded, resorting to force,

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1 - To Israeli ships we should add ships owned by third parties carrying goods for Israel.

2 - See *supra*, p. 124 sqq.

in breach of the U.N. resolutions regarding the truce and of the Armistice Agreements concluded with the Arab States.

A. The Security Council has sought, by various resolutions, to check the invasion by Israeli forces of "territories which were respectively under Egyptian and Jordanian sovereignty."[3] The resolution of 4 November 1948 obliges Israel to withdraw those of its "forces which have advanced beyond the positions held on 14 October, 1948."[4] The United Nations mediator was authorised "to establish provisional lines beyond which no movement of troops shall take place."[5] *Despite this clear obligation, Israel resumed its advance in the same region of the Negev, and the Security Council was forced to intervene once more to reaffirm its previous resolutions which the Zionists had not obeyed.* According to this fourth resolution,[6] the Governments concerned were to implement, without further delay, the instructions issued by the Acting Mediator, *"these instructions making it imperative upon Israel to withdraw its troops from the positions which they had occupied after 14 October."*

However, Israel did not see fit to submit either to this or to other resolutions; her military action did not come to a halt, and then only temporarily, until March 1949, when her forces had reached the shores of the Gulf of Aqaba.

B. But before this date, another event had occurred which aggravated the illegality of the Israeli action: *the Israeli-Egyptian Armistice Agreement signed in Rhodes on 24 February 1949.*[7]

That the occupation of the coast, and particularly of the village of Umm Rashrash, where the port of Elath was later established, came after the conclusion of the Armistice, is beyond a shadow of

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[3] - Ed. Rabbath, *Mer Rouge et Golfe d'Akaba dans l'évolution du droit international,* Beirut, p. 57.

[4] - This resolution reaffirms those of 15 July and 19 August 1948, imposing the truce and denying all legal effect to violations thereof.

[5] - Quoted by Ed. Rabbath, *op. cit.,* p. 57.

[6] - Resolution of 29 December 1948.

[7] - Israel's violation of the Armistice came after other indisputable violations of Security Council resolutions.

doubt.[8] Besides, the Israelis themselves do not deny this fact: one of their commanders in Aqaba stated that Israel had violated the Armistice in order to secure an outlet on the Red Sea through the Gulf of Aqaba.

It is hardly worth pointing out that the Armistice Agreement expressly prohibited the resumption of hostilities;[9] this, indeed, was its sole *raison d'être.*

2) THE ARAB STATES DID NOT ACCEPT THE NEW SITUATION:

(a) It is true that, unlike that with Egypt, the Armistice with Jordan was signed after the occupation of the coast by Israel. But there is nothing in the text of this agreement, or in the appended map, which indicates or implies that Jordan accepted the situation which had been created by violations of the truce.

(b) Nor does the conduct of Jordan and of Egypt after the signature of the Armistice Agreements give any indication that they accepted the situation. As we have already seen, not only did recognition of Israel by the Arabs never come about, but, what is more, their relations continue to be characterised by a state of war.[10]

If, therefore, hostilities are, in principle, suspended between the parties—but history has proved that the opposite is the case—Israel's acquisitions remain without any foundation in law.

(3) THIS *DE FACTO* OCCUPATION IS INCAPABLE OF CREATING A RIGHT FOR ISRAEL:

It is, of course, clear that the succession of events leaves no doubt as to the illegality of this sudden invasion by Israel of the

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8 - *Cf.* The telegram sent on 22 March 1949 by the President of the Security Council to the United Nations Mediator.

9 - Article 1, paragraph 2, of the Egyptian-Israeli Armistice Agreement stipulates that: "No aggressive action by the armed forces—land, sea, or air—of either Party shall be undertaken, planned or threatened against the people or the armed forces of the other."

10 - *Cf. supra,* pp. 153-154.

Gulf of Aqaba, and it is hardly necessary to emphasise the elementary point that an illegality, far from creating a right, actually pledges the responsibility of the party committing the illegality. For, on the one hand, the Security Council, which cannot possibly be regarded as suspect by the Zionists, explicitly stated, in its resolution of 19 August 1948, that "no party is entiled to gain military or political advantage through violation of the truce."[11]

On the other hand, the Armistice Agreements, which were imposed on the Arab States by the Security Council,[12] to the advantage of Israel, and which were signed by the latter, clearly show that not only do the parties "recognise the principle that no military or political advantage should be gained under the truce ordered by the Security Council...," but that their very existence cannot be invoked as a basis for any right whatsoever at the time of the final settlement of the Palestine question.

"As a de facto occupation occurring during the period of the cease-fire, and notwithstanding the formal provisions of the Armistice Agreement, it cannot be converted, in law, into territorial sovereignty in favour of the belligerent State, and, still less, result in an annexation pure and simple, such as the annexation of the Negev to the State of Israel."[14]

This "State" cannot, therefore, avail itself of any alleged right of riparianship on any part of the Gulf of Aqaba. Juridically, it is a third party whose very existence is a constant threat to the security of neighbouring States.

II. THE GULF OF AQABA IS NOT A WATERWAY FOR INTERNATIONAL NAVIGATION : ISRAEL HAS NO RIGHT OF PASSAGE IN IT :

The principle of freedom is the dominant feature of international

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11 - Quoted by Ed. Rabbath, *op. cit.*, p. 57.

12 - A. Gervais: *Les Armistices Palestiniens,* A.F.D.I., 1956, p. 17 sqq.

13 - Article 4, paragraph 1, of the Egyptian-Israeli Armistice Agreement. This provision alone is sufficient to deprive the occupation of the coast of all semblance of legality, even if such occupation had occurred before the signature of the armistice agreements.

14 - Ed. Rabbath, *op. cit.*, p. 58.

law concerning the high seas. But from the first, with a view to safeguarding this freedom, a right of sovereignty was recognised for States over certain waters, or parts thereof, which wash their territories.

The Gulf of Aqaba, which is a sort of closed sea 95 miles long and from 7 to 14 miles wide, washing the territories of three Arab States, is "blocked" at the end by the islands of Tiran and Sanafir, Egyptian and Saudi Arabian territory respectively. There can be no doubt that it is not subject to this principle of freedom, because it does not in any way form part of the high seas. Its waters are internal and, therefore, national waters, whether we take into consideration the rules of international law relating to historic bays, or those relating to the determination of the base line of the territorial sea.

1) THE GULF OF AQABA IS A NATIONAL GULF:

The problem of the width of territorial waters gives rise to another problem—that of the base line, i.e., of the starting point for the measurement of the territorial sea. On the occasion of the conflict between Great Britain and Norway, the International Court of Justice enunciated the rules applicable in that case.[15] The 1958 Convention on the Territorial Sea and Adjacent Zone sanctioned the solution worked out by the Court.

According to the terms of Article 3 of this Convention "the base line follows the line of the lowest ebb-tide along the coast." However, it is not always easy to put this rule into application and often "geographical realities dictate the solution" that must be adopted in each case.[16] In fact, the method applied "consists in choosing points along the lowest ebb-tide line and joining them by straight lines; this method is especially applicable in the case of well-defined bays."[17] The Geneva Convention has adopted this rule.

15 - International Court of Justice: *Affaires de Pêcheries,* 18 December 1951, Recueil, p. 116 sqq.
16 - I.C.J., *op. cit.,* p. 128.
17 - I.C.J., *op. cit.,* p. 129-130.

However, as regards bays, the problem has been to determine the length of the opening which permitted a State to draw a straight line serving as a base line for its territorial sea. Early arbitral sentences considered that this opening should not exceed ten nautical miles;[18] but the Court has held that "the ten-mile rule has not acquired the authority of a rule of international law."[19] The Geneva Convention has definitely settled this question by stipulating in its Article 7, that "if the distance between the lowest ebb-tide lines of the natural points of entry to a bay does not exceed 24 miles, a demarcation line can be drawn between these two lowest ebb-tide lines, and the waters thus enclosed are considered as internal waters."

This provision of the Convention applies very precisely to the Gulf of Aqaba, for to penetrate therein from the Red Sea the only opening is that of the Straits of Tiran, barely four miles in width, between Ras an-Nasrani, a promontory on the Sinai peninsula to the east, and the Island of Tiran on the west, both belonging to Egypt.

The fact that there are three States on the Gulf of Aqaba does not in any way alter this situation, particularly as the three States are taking joint action to claim the same right.[20]

2) THE GULF OF AQABA IS ALSO A HISTORIC GULF:

To show the historic nature of the Gulf of Aqaba, it is not necessary to repudiate the international law drawn up by the West to suit its own interests. The Arab states could, quite legitimately, refer to Moslem Law to determine the rules applicable to their relations with other nations. For, even if modern international law often has its roots in "the prescriptions and practices of Islam,"[21] it differs from Islamic law in particular as regards the concept of the State in Islamic countries.

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18 - Mme Bastid, *Cours de droit international public,* 1964-65, p. 602.

19 - I.C.J., *op. cit.,* p. 131.

20 - *Annuaire de la Commission du droit international de l'ONU,* 1962, Vol. II, p. 24.

21 - Baron de Toube, *Recueil des cours de l'Académie de droit international,* 1926, vol. I, p. 380 sqq.

According to this law, "the Moslem State cannot, in theory be anything but a unitary State."[22] If one takes one's stand on this law, the following will be the conclusion: the Gulf of Aqaba, located as it is entirely within one State, incontestably forms part of the territory of that State.[23] In other words, one can say that the Gulf has a national character, and this conclusion exactly corresponds to reality.

But modern international law which, with certain adaptations, tends to become universal, provides the Arab countries with sufficient juridical means to arrive at the same final result. The fact that there are three States on the shores of the Gulf of Aqaba does not constitute an obstacle to the recognition of its historic nature.[24] All this is quite obvious and it will, therefore, not be necessary to dwell on it any further.

As for the conditions which must be met in order to create historic title, it is generally admitted that three factors must be taken into consideration:

(A) The authority exercised over this area by the State claiming historic title;

(B) Continuity in the exercise of this title;

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22 - "The unity of the Moslem *Umma* is a basic postulate of the theory of the Moslem State," (Ed. Rabbath, *op. cit.*, p. 43.)

23 - This solution applies to gulfs whose opening on the high seas does not exceed a width which, though not precisely determined, can certainly be up to 24 miles (Geneva Convention on the Territoral Sea and Adjacent Zone, art. 7) V. Bouchez: *The Regime of Bays in International Law*, Leyden, 1964, p. 16 sqq.

24 - *Yearbook of the U.N. International Law Commission*, 1962, vol. II, p. 24 (Fr. edit.) "It does not appear that the existence of several riparian States to any considerable extent modifies the conditions required for the formation of a historic title." *Cf.* also Madame Bastid, *Cours de droit international public*, 1964-65, p. 602, who asserts that "when there are several riparians on the bay the waters will be shared; there is, therefore, a delimitation in the internal waters and Article 12 of the Convention (on the territorial sea) contains fairly precise provisions on this point." Court decisions have also sanctioned this point. See Central American Court of Justice, decision of 9 March 1917 rendered in the case of the Gulf of Fonseca, reported in *Memorandum of Historic Bays*, prepared by the U.N. Secretariat (Doc. A/Conf. 12/1), *Official Documents of the U.N. Conference on the Law of the Sea*, Vol. I, p. 8 sqq.

(C) Attitude of other States.[25]

However, in the opinion of certain writers, it is only necessary to establish whether the claim is justified by economic necessity, national security, vital interest or other considerations.

In the case under consideration all these conditions are amply fulfilled.

A. The riparian Arab States exercise rights of sovereignty over the whole stretch of the waters of the Gulf. While publicists are of the opinion that "as regards the nature of appropriation acts, it is difficult to be very specific about their characteristics," they are certain that the "exclusion of foreign ships or their subjection to the laws of the riparian State . . would clearly be acts fully indicative of the will of the State."[26] Such acts have taken place in the Gulf of Aqaba: in 1951, a British ship carrying goods for Israel was intercepted in the Gulf by Egyptian forces.

The States concerned maintain military forces for the purpose of keeping watch over the coast; Egyptian and Saudi troops are permanently stationed on the islands of Tiran and Sanafir to ensure control over the entrance to the Gulf.

Finally, the Arab States exercise legislative and police powers over this part of their territory. An example is provided by Egyptian Circular No. 39/1950, of 21 December 1950, which stipulates that the part of the waters lying to the west of the line between Ras Muhammad and Ras an-Nasrani is closed to navigation.[27] For these are acts which provide undoubted evidence of the effective sovereignty of these States over these waters.[28]

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[25] -Yearbook of the I.L.C., *op. cit.*, p. 15 (French edit.)

[26] - Gidel: *Le droit international de la mer,* Vol. III, p. 633, quoted in the Yearbook of the I.L.C., 1962, II. p. 17 (French edition), similar view by Bourquin: *Baies Historiques* in *Mélanges Georges Sauser-Hall,* 1952, p. 43.

[27] - This circular was sent to all navigation companies and consulates which were at that time in Egypt.

[28] - Draft convention prepared for the Hague Conference of 1930, for the codification of international law, in Bustamante: *La Mer territoriale,* 1930, p. 257. See also United Nations Memorandum on *Historic Bays* (A/Con./13-1), p. 14, for an identical provision embodied in the draft submitted in 1933 to the Seventh International Conference of American States.

B. This sovereignty has been exercised continuously; as far back in history as one wishes to go, one always finds authority being effectively exercised over the area. As early as the first days of Islam, a treaty concluded with the Christians with regard to the port of Aqaba imposed upon them "the payment of the *jizya* and expressly put their ships under the protection of Islam."[29] It can thus safely be said that "the Gulf of Ayla (now Aqaba) and the Red Sea were, already at that time, an Arab sea held by one party, hermetically closed, through which plied Moslem ships exclusively.[30]

History has not changed this situation. When the Ottoman Empire established itself in the region, it became, with the Pasha of Egypt, co-successor to Arab sovereignty. At the end of the First World War, which led to the final disappearance of this Empire, Great Britain extended her occupation to the shores of the Gulf.

Since their independence, the present Arab States have succeeded to the authority which had always been exercised either by the Moslem State itself or on its behalf.

C. The third condition raises the problem of the acquiescence of foreign States in the exercise of sovereignty by the riparian State or States over waters which are claimed to be historic. Publicists are unanimous in regarding this condition fulfilled when other States refrain from expressing their opposition.[31] Thus, the absence of any reaction by foreign States is sufficient to confer historic character on a bay.[32] In fact, proof of international acquiescence is established by long use.[33]

This opinion has been sanctioned by court decisions, according to which "public knowledge of the facts, general acquiescence by the international community . . . would in any case enable Norway to oppose its system to the United Kingdom."[34]

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29 - Ed. Rabbath, *op. cit.*, p. 35.
30 - *ibid.*, p. 36.
31 - See references listed in the *Yearbook of I.L.C., op. cit.*, p. 19 sqq.
32 - Bourquin: *op. cit.*, p. 46.
33 - Gidel: *op. cit.*, Vol. III, p. 651; Ed. Rabbath, *op. cit.*, p. 50.
34 - International Court of Justice, *Fisheries Case,* decision of 18 December, 1951, *Recueil*, 1951, p. 138.

The mere fact that "acquiescence" by foreign States is not absolutely general, does not constitute sufficient reason to deny historic title to the State claiming it.[35] For, generally, the problem of such a claim only arises in cases of dispute, i.e., when a foreign State, with good reason, declare its opposition.

In the case of the Gulf of Aqaba, the only opposition has come from Israel and the United States.[36] Israel's opposition is inoperative because it emanates from an entity which the Arab States have never recognised as a State, and which has been imposed upon them by force. Opposition by the United States has been of a purely political nature and cannot be taken into consideration by the jurist; it is rather a manifestation of hostility towards Egypt than concern by the United States for the *safeguarding of a legitimate interest.*

Publicists have adopted different views about these oppositions. Gidel, the great master on the law of the sea, write: "Oppositions cannot all be put on the same level without making a distinction as to their nature, to the geographic or other situation of the State from which they emanate.[37] And this opinion is rightly considered as "wise and realistic."

On the other hand, but following the same line of reasoning, acquiescence on the part of a State having real navigational interests in the waters under consideration, can have decisive importance. Thus, acquiescence by Great Britain in a letter recognising Egypt's right to visit foreign ships in the Gulf,[38] offset American opposition considerably.

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35 - Bourquin: *op. cit.,* p. 47-48. Gidel: *op. cit.,* p. 634, who expressly states that "opposition by one State cannot invalidate a custom."

36 - Aide-Mémoire presented by the Government of Israel on 11 February, 1957, *op. cit.,* p. 634; similar view in Bourquin, *op. cit.,* pp. 47-48; Fitzmaurice in *British Yearbook of International Law,* 1953, pp. 31-32.

37 - Yearbook of I.L.C., 1962, Vol. II, p. 21 (French edition;) Gidel, *op. cit.,* p. 634.

38 - Letter addressed by the British Embassy to the Egyptian Government on 29 July 1951 ... Egypt had, on several occasions, exercised her right of control over ships of different nationalities transiting through the Gulf of Aqaba. But the fact which rendered international recognition of this control even more decisive was the precedent of the British ship *Empire Roach* which,

D. There can be no doubt that the three conditions generally required for the establishment of historic title are fully met in the case of the gulf of Aqaba. But there is another view which holds that historic character can exist, not only on the basis of the factors discussed above, but "on the basis of other *particular circumstances*, such as geographical configuration, requirements of national defense, or other vital interests of the riparian State."[39] This is not an isolated doctrine; on the contrary, it has been advanced or supported by governments in attempts to codify international law; it is clearly and unequivocally enunciated; Article 7 of the draft International Convention submitted to the Conference feld in Buenos Aires in 1922 by the *International Law Association* defined it as follows:

"The State can include within the limits of its territorial sea estuaries, gulfs, bays or parts of the contiguous sera over which its jurisdiction has been confirmed by continuous and age-old use, or, in default of these precedents, in case such jurisdiction is absolutely necessary according to the concept of Article 2, to guarantee defence and neutrality and to ensure navigational and coastal maritime police services in all their forms."[40]

This criterion of the vital interest of the riparian State, on which historic title is based, was also reaffirmed by the declarations

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on 21 December 1950, having disobeyed the instructions relating to passage through the Straits of Tiran, was seized by the Egyptian authorities. In the exchange of notes between Egypt and Great Britain which followed, the British Government accepted that its ships proceeding to the Gulf of Aqaba could be visited (*Cf.* Gamal El-Oteifi: *Le Golfe d'Aqaba et Israël, Revue de la Politique Internationale,* Belgrade, No. 414-415, 5-20 July, 1967, pp. 6-8.)

It must be observed that, in 1955, England went back on the contents of this letter by stating that she considered the Gulf of Aqaba to be an international maritime waterway. In 1957, during the discussion in the United Nations of the problem of the withdrawal of Israel from Egyptian territory, almost all the other Western States followed the British and American positions on the character of the Gulf of Aqaba. It is incontestable that, for these countries, recognition of the international character of the Gulf constitutes one of their means of supporting Israel against the Arab States. Their opposition, therefore, is of very limited value.

[39] - *Yearbook of the I.L.C., op. cit.,* p. 23, references found in Document A/Conf. 13/1.

[40] - Mentioned in Yearbook of I.L.C., op. cit., p. 23. (French edit.)

of certain governments at the 1930 Hague Conference.[41]

But in the case of the Gulf of Aqaba, no one has yet been able to deny the interest of the Arab States without committing a serious offence against history and reality. The need to safeguard territorial security is all too evident, as has been shown on several occasions by the behaviour of Israel. Moreover, the riparian States can quite legitimately claim exclusive rights over the riches of the sea in this region.

In view of the above it is clear that the Gulf of Aqaba very definitely has the characteristics of a historic gulf. Hence, all its waters are internal water, the use of which the adjacent State may withhold from the other members of the international community, and this includes the sub-soil, the soil, the body and surface of the water and the air above."[42]

III. THE LEGAL REGIME OF THE STRAITS OF TIRAN: ABSENCE OF ANY RIGHT FOR ISRAEL :

Straits are natural passageways between two seas. To be considered as a strait, such passageway must not be wider than double the width of the territorial sea. If the strait does not connect two parts of the high seas, no obligation is imposed by international law to open it to international navigation.[43] But if the strait links two parts of the high seas, international custom imposes the obligation to open it to international navigation, even if it is located in the territory of one State only.

This principle was expressly confirmed by the decision of the International Court of Justice in the *Corfou Strait Case*. The court stated that, by general admission, and in accordance with inter-

41 - In the view of publicists as well as of governments, this criterion is *alternative* and not cumulative.

42 - Gidel: *op. cit.*, Vol. III, p. 625; Ch. Rousseau: *Droit international public*, Paris, 1953, p. 445; Mme Bastid: *Cours de droit international public*, 1964-65, p. 610.

43 - Rousseau: *op. cit.*, p. 445; Colombos: *Le Droit International de la mer*, p. 125; Baxter: *The Law of International Waterways*, 1964, p. 163-164.

national custom, States have the right, in time of peace, to sail their warships through straits which are used for international navigation for communication between two parts of the high seas, without securing prior authorisation from the riparian State, on condition that such passage be innocent.[44] Article 16, paragraph 4, of the Geneva Convention, does not restrict the right of passage to straits connecting two parts of the high seas and assigned to international navigation; it extends it to cover straits connecting the high seas with the territorial waters of a third party state.[45]

But even thus modified, the text of the law is not applicable to the Straits of Tiran, for the latter do not connect the Red Sea with allegedly Israeli territorial waters.[46] Indeed, a ship proceeding towards Elath must travel over 95 miles of Arab internal waters, after passing through the Straits, before reaching its destination.

On the other hand, it is an established fact in international custom that States have the right, in time of war, to exercise control over ships transiting such straits if they are located in their territory.[47] Similarly, they can refuse passage through such straits to enemy ships, and to those transporting contraband goods to the enemy, even after the conclusion of an armistice.[48]

Thus the Montreux Convention of 1936, relating to the regulation of navigation in the Bosphorus and the Dardanelles, explicitly recognised the right of Turkey, should she find herself in a state of war or under the threat of war, to make passage through the straits subject to her own free will. She was also to have the right to build fortifications there.

Moreover, during both World Wars, England constantly insisted

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[44] - Corfou Strait Case Decision of 9 April 1949, *Recueil*, p. 28.

[45] - At the United Nations Conference on the Law of the Sea, the Arab States opposed this article, but without success. So they have, in general, refrained from ratifying the Convention adopted by the Conference. Some of these States expressed reservation on this subject at the time of signing.

[46] - See above our discussion of the internal nature of the waters of the Gulf of Aqaba; also *supra*, p. 152 sqq.

[47] - Baxter, *op. cit.*, p. 215.

[48] - It will be recalled that the port of Elath, occupied after the armistice, cannot be legally considered as Israeli, even by those who recognise the validity of the acts creating Israel (*Cf. supra*, p. 242-243).

on exercising control not only over the Straits of Gibraltar, but also over the Straits of Magellan in South America.

Again, very recently, the Soviet Union objected to the passage of two American ice-breakers through the Straits of Kara and Vilkitsky in the Arctic Ocean, each of which is 40 kilometres wide. The Soviet Union made it known that these Straits formed part of Soviet territorial waters, and that the passage of the two ice-breakers would constitute a frontier violation.[49]

Thus, the Straits of Tiran cannot be considered as a waterway for international navigation, because they connect the Egyptian territorial sea with the internal waters of Arab states acting jointly. Due to this fact, and quite apart from a state of war, Israel cannot claim right of passage through the Straits.

[49] - *Le Monde*, 3-4 September 1967. Yet, the U.S.S.R. and the United States are not at war.

Chapter V

The Suez Canal

The Suez Canal, dug in Egyptian territory in the XIXth century, has considerably reduced distances by connecting the Indian Ocean with the Mediterranean through the Red Sea. The construction and the operation of the Canal were the objects of a concession granted to the Compagnie Universelle du Canal Maritime de Suez.[1] Under this regime, freedom of navigation in the waterway was recognised and practiced. But the European Powers interested in navigation in the Canal, and above all France, no doubt fearing[2] such a freedom unilaterally secured[3] could not but be precarious, asked the Ottoman Empire and Great Britain, which at that time occupied Egypt, to convene a conference which would establish, by agreement, a regime for freedom of navigation in the Suez Canal. Great Britain accepted the French proposal only on condition that the proposed treaty should not in any way result in "restricting freedom of action of the British

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1 - The *firmans* of the Khedive of Egypt of 1854 and 1856, setting out the terms of this concession, were approved by the Sublime Porte in 1866.

2 - A writer who lived at the time of the Constantinople Convention. indeed, asserts that "the events which took place in Egypt in 1882 and the subsequent British occupation gave rise to a keen feeling of the necessity for an international protection, clearly defined by agreement and embodied in a treaty binding the various States." (H. Bonfils: "Manuel de droit international public," 1908, no. 152.)

3 - In fact, "when freedom of passage is the result ... of a clause in an instrument imposed on the operator of a concession, as was the case for the Suez Canal before 1888, it can be difficult to determine under what conditions and at what moment freedom of passage constitutes a subjective right in favour of States." (*Les aspects juridiques fondamentaux de la question de Suez, Revue Générale de droit international public,* 1958, p. 404.)

Government during the occupation of Egypt by its forces." The Conference which met in Constantinople in 1885 ended by adopting the Convention of 29 October 1888, signed by eight European Powers and by Turkey.

The Egyptian Government, in a unilateral declaration on 24 April 1957, confirmed the Constantinople Convention and determined its significance and scope.

It is in the light of these juridical situations that Israeli claims must be examined. Since her creation in 1948, Israel has been claiming an actual *right* of passage for her ships in the Suez Canal; to attain this end, Israel invokes mainly the provisions of the Constantinople Convention and the rules of general international law.

Examination of these two sources, from which a right to use the Canal might be derived, shows in fact, that Israel does not, and cannot, have such a right against the will of Egypt.

I. THE CONSTANTINOPLE CONVENTION DOES NOT CREATE FOR ISRAEL ANY RIGHT AGAINST THE U.A.R.

The decision of the Constantinople Convention was requested and obtained by States which, at that time, were interested in freedom of navigation in the Suez Canal. They thus secured themselves a real right of transit for their own ships; they did, however, insert in the treaty, an option for the non-signatory States to take advantage of the same protection. The 1888 Convention did not create an objective juridical situation of which third party States could avail themselves; it simply established a protection system decidedly more favourable to the signatory States. Thus, since 1888, the Suez Canal has been used by two groups of ships: those which transit the Canal by virtue of an actual contractual right, and those which do so only by virtue of unilateral action by Egypt in opening the Canal to international navigation.

1) PRIMARY MEANING OF THE CONVENTION:

It creates a contractual right only for the contracting States.

An international treaty is only effective as between the contracting parties. This fundamental and uncontested principle of international law is based on the independence and sovereignty of States, which are still dominant principles in international law. Publicists and decisions by international courts spell out this notion in very clear terms: "The rule according to which a treaty creates rights and obligations only between the parties thereto, is a fundamental rule which determines the effects of treaties vis-à-vis third parties;"[4] in the view of the International Court of Justice "a treaty creates a right only for the States parties to it."[5]

But although the principle itself has never been contested, the claim has been made that it is departed from when the contracting States make stipulations in favour of other States, or when the treaty concluded, by its very nature, creates a situation which can be applied to all. None of these cases are applicable to the Constantinople Convention.

A. – The States Parties to the Convention did not Stipulate in Favour of Israel:

The question of making stipulations in favour of others has been the object of a good deal of discussion.[6]

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[4] - Mme. Bastid, *Cours de droit international public,* 1956-66, p. 253; in the same order of ideas see: P. Reuter, *Droit international public,"* 1963, p. 74; M. Sibert, *Traité de droit international public,* 1951, vol. II, p. 250 and the references mentioned. McNair: "The Law of Treaties," London, 1938, p. 209 ets.; Oppenheim-Lauterpacht: "International Law," London, 1958, vol. I, p. 937.

[5] - *Case Relating to Certain German Interests in Upper-Silesia,* Judgment no. 7 of 25 May 1926, p. 28. The P.C.I.J. upheld this point of view in the *Case of Free Zones* (decision of 19 August, 1929) by "considering that in no circumstances is article 435 of the Treaty of Versailles applicable against Switzerland, which is not a party to this Treaty, except insofar as Switzerland has herself accepted it."

[6] - The different positions were set out in the comments on article 32 of the International Law Commission's Draft Treaty Law, *Official Documents of the General Assembly,* 21st session, supplement No. 9, (A/6309/Rev/1) p. 61 (French edit.).

Its advocates in international law quote the judgment of the Permanent Court of International Justice in the case of the Free Zones[7] and, in particular, the following passage: "It cannot be readily presumed that stipulations advantageous to a third party State were made with the purpose of creating an *actual right* in its favour. However, there is no reason why the will of sovereign States should not have this object and this effect. The existence of a right acquired by virtue of an act drawn up by other States is thus a *question of kind:* it must be determined whether the States which made stipulations in favour of another State intended to create for the latter an actual right, which it accepted as such." In this passage, the Court certainly did not exclude stipulation in favour of others from international law; but no more did it "admit that the right exists by virtue of the stipulation itself.[8] Thus, for stipulation to be effective in international law, it must possess the following characteristics:

— A common will among the contracting parties to bind themselves vis-à-vis a third party;

— The offer of a right to this third party;

— Acceptance of this right by the third party.[9]

The International Law Commission of the United Nations has adopted this concept of stipulation in favour of others, but only as a starting point. It is clear from the draft articles which it adopted in 1966 that a right cannot be stipulated in a treaty in favour of a third party unless two series of conditions are met. The first series concerns the creation of the right: "A right is created for a State by a provision in a treaty to which it is not a party, if the parties thereto intend, by this provision, to confer this right either on the State in question or on a group of States to which it belongs, or on all States, and on condition that this State accepts the right. Its acceptance is presumed in the absence of indications to the

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[7] - Case of the Free Zones in Haute Savoie and Pays de Gex, Judgment of 7 June 1932, p. 147.

[8] - Mme P. Bastid, *op. cit.*, p. 260.

[9] - M. Sibert, *op. cit.*, p. 261.

contrary."[10] The conclusions which can be reached through an examination of the decisions of the Permanent Court have, therefore, been ratified by the Commission. But the Commission has introduced an important element of precision by providing that the required acceptance of the third party State can no longer be presumed, since it follows from the very terms of the treaty that this acceptance should be given in certain forms or under certain well-defined conditions.

The second series of conditions required for the existence of the stipulation in a treaty of a right in favour of others concerns the revocation or the modification of the right of a third party State: "This right cannot be revoked or modified by the parties, if it is established that it was not intended to be revocable or modifiable without the consent of the third party State."[11] This provision is not formulated in clear terms, but its meaning is none the less precise. In the eyes of the Commission, the parties to the treaty are free to modify the right stipulated for the third party State unless they themselves declared their intention of limiting their own freedom; but how can this restriction of the freedom of the contracting parties be "established," except by taking as a basis the terms of the treaty itself? Only in such a case is it possible to speak of stipulation in favour of others; otherwise such a right, with no basis at all, could hardly be said to exist.

To sum up: the notion of the stipulation of a right in favour of others is not rejected by international law; however, it can only exist when the contracting States intend to bind themselves vis-à-vis a third party State and when acceptance by the third party State renders the stipulated right irrevocable without the consent of that State.

The Constantinople Convention contains a stipulation in favour of non-signatory States, guaranteeing them an actual right. There is

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[10] - Article 32, paragraph 2 of the Draft, *Official Documents, op. cit.*, p. 15. (French edition.)

[11] - Article 33, paragraph 2, *Official Documents, op. cit.*, p. 15. (French edition.)

no doubt that the parties intended to confer this right upon other States, but the adherence of these States was to come about in conditions laid down by Article 16 of the Treaty, which provides that "the High Contracting Parties undertake to bring the present Treaty to the knowledge of those States which have not signed it, inviting them to adhere thereto." In other words, adherence by third party States to the Convention is the only means by which they can avail themselves of rights created by the Convention. If we admit the hypothesis that stipulation for others is in itself creative of rights within the framework of the Convention, then Article 16 would be superfluous, and even inexplicable. Therefore, adherence by the State is necessary. But, to our knowledge, there has not been a single adherence since 1888.

Nor is the second condition fulfilled, for there is nothing in the Convention, nor even in the conduct of the signatory Powers, which could lead to the belief that these Powers do not have the legal power to annul or amend the terms of this Convention.

It is, therefore, not possible to recognise a contractual right of transit through the Suez Canal in favour of those States non-signatories of the Convention which did not avail themselves of the option offered to them. In our opinion, Israel is in a peculiar situation in the category of third parties. In fact, since May, 1948, Egypt has denied Israel not only all right of passage through the Canal, but also the possibility of acquiring any such right. Having become independent, and succeeding to Great Britain and the Ottoman Empire, as parties to the treaty of 1888, Egypt has powers equal to those of the other contracting parties. Moreover, Article 16 of the Convention applies to States, but in Egypt's view Israel has not acquired the quality of statehood.

It is interesting to note that the official attitude of the United States as regards the Panama Canal can be summed up by asserting that third party (i.e. non-signatory) States cannot invoke any right on the basis of the Convention guaranteeing freedom of navigation for the contracting parties. Publicists point out that this opinion

should also be applied in the case of the Suez Canal.[12]

B. – The Constantinople Convention did not Create an Objective Situation of Which Israel Could Avail Itself.

International relations have always been cognisant of *de facto* situations in which a State, or group of States, through their superior power, impose their views upon the other members of the international community. But international law, even if it has become partly institutionalised by the creation of international organisations, remains essentially based upon the consent of States. In other words, at the present stage in the evolution of this law, there cannot be allegedly objective situations which can be opposed to all States without their consent.

Aware of this fact, publicists have never been able to provide a sufficient systematisation of this theory of treaties creative of objective regimes. In the view of certain writers there are treaties which, because of their very nature, are effective as regards everyone.[13] They follow up this assertion with a list of international agreements which have this character. This is begging the question, for no juridical criterion has been devised to overcome the difficulties which are bound to arise in drawing up the list of these agreements.

According to other writers, this theory has its origin in the distinction between contract-treaties and law-treaties, which distinction embraces the whole range of international agreements. "From the point of view of the binding force of treaties," the only one which is of interest to us here, "it has been pointed out that, in contrast to contract-treaties, which are binding only upon the contracting States, law-treaties are applicable to States which did not sign them."[14] In fact, "the distinction between contract-treaties and law-treaties does not have much meaning"[15] for if the law is general

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[12] - Baxter: *The Law of International Waterways,* 1964, pp. 176-177.

[13] - Mme. Bastid, *op. cit.,* p. 262 sqq.

[14] - For an account of this distinction and a critique thereof see: M. Sibert, *op. cit.,* Vol. II, p. 183 sqq.

[15] - Paul Reuter, *op. cit.,* p. 58.

and applies even to those who rejected its provisions at the time of its adoption, "the alleged law-treaty applies only to States which signed and ratified it or to those which acceded to it."[16]

The International Law Commission of the United Nations has confirmed this viewpoint by rejecting Article 63 of the first draft on Treaty Law, whose provisions established the existence of treaties valid *erga omnes*.[17]

Thus the Constantinople Convention is only applicable to Egypt as regards the rights which Egypt has agreed to confer upon States parties to the Convention, and only with respect to those States. Thus, such rights as Israel may claim accrue to her from this Convention certainly cannot be invoked against Egypt.

2) SECOND MEANING OF THE CONVENTION: INSTITUTION OF AN APPLICABLE SECOND JURIDICAL REGIME:

Even before 1888, the Suez Canal was under a regime of free navigation for ships of all States. This regime was established by the deeds granting the concession. Consequently, one wonders what influence the Constantinople Convention had on the situation which had existed previously. We have seen that it created actual rights only in favour of the signatory States. But we have also seen that it gave an option to third party States to adhere thereto and that the latter have not taken advantage of the option. On the other hand, there is no provision in the Convention to determine the position of third party States which did not subsequently accede to the Convention.

It follows from the above that the Convention of 1888 can be interpreted as having established a second system, applicable to signatory States, or to those which adhered later, without in any way changing the previous system, which remains applicable to third party States. This interpretation is confirmed by the Egyptian declaration on the Suez Canal of 24 April 1957 in which Egypt, after having affirmed her determination to ensure uninterrupted

16 - M. Sibert, *ibid.*, p. 188.

17 - *Yearbook of the International Law Commission*, 1964, Vol. I, pp. 102-115 (meeting of 4 June, 1964), (French edition.)

free passage for ships of all nations within the limits laid down by the Constantinople Convention,[18] draws a clear distinction between the parties to this Convention and third party or non-signatory States.[19]

A. Transit Right of States Which Signed the Convention is not Unlimited in all Circumstances :

The Convention does, indeed, guarantee freedom of passage in times of war as well as in times of peace, to every vessel of commerce or of war, including those of belligerents; the only restriction is the prohibition to block or attack the Canal. This is the regime established by Articles 1, 4 and 5 of the Convention, which was confirmed by the Egyptian declaration of 1957. Does this system apply in case of war? In this connection, two points must be considered.

There can be no doubt that Egypt is bound by the provisions of the Convention in the case of a war in which she is not involved. Indeed, this is precisely the case that is anticipated and determined by the above-mentioned provisions: while guaranteeing freedom of passage for the warships of belligerents, Egypt does not lose her quality of a neutral State. Thus, the principal contribution of the Convention is to exempt the territorial State (Egypt) from applying the rules of the law of war in armed conflicts to which she is not a party, with a view to safeguarding the continuity of navigation in the Canal.

In case of war with the territorial State, in order that overall departures from the law of war might not lead to absurd results, the Convention was compelled to adopt certain substitute provisions with a view to guaranteeing the security of the Canal and of Egypt in times of war or of armistice.[20] This is the aim of Articles 10 and

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[18] - Paragraph 3 (a) of the Declaration published in *United Nations Review,* April, 1957, p. 16.

[19] - Paragraph 9 (b), *ibid.*

[20] - Paul de Visscher, *op. cit.,* p. 410.

12 of the Convention. According to these provisions, freedom of navigation does not "stand in the way of any measures which His Majesty the Sultan and His Highness the Khedive, ... may find it necessary to take to assure the defense of Egypt and the maintenance of public order by their own forces."[21] In any case, the rights of "the territorial Power are reserved."[22] The texts are clear and precise: if Egypt is at war, and if the maintenance of free navigation constitutes a threat to her own security, it is not only her right, but her duty, to interrupt navigation in the Canal; as for the belligerent, it cannot claim that its right should be maintained, at least for the duration of the war.[23]

With the exception of the most biased, it can be said that publicists are unanimous in holding that in case of war, the U.A.R. has the right, by virtue of the provisions of the Constantinople Convention, to deny the use of the Suez Canal to the ships of her enemy.[24]

The above-mentioned texts place another limitation upon the right of passage in providing for the "maintenance of public order." In fact, this notion has a purely internal significance; it does not concern relations between States. In our view, its presence in the Convention means that, even if Egypt is not at war with a foreign State, her government can interrupt navigation in the Canal if she deems this measure appropriate for the restoration of public order which a section of the population may have disturbed.

B. – Unilateral Declaration by Egypt

The regime for the transit of ships belonging to States not parties to the Convention is the result of a unilateral declaration by

21 - Art. 10, paragraph 1.

22 - Art. 12.

23 - During both World Wars, when the Canal was under the control of Great Britain, ships belonging to countries at war with her were prevented from passing through the Canal.

24 - Baxter, *op. cit.*, 223-224; Brooms: *The Legal Status of the Suez Canal,* Helsinki, 1961, p. 129 and 209; Obeita: *"The International Status of the Suez Canal,"* The Hague, 1960, pp. 87-89.

Egypt assigning the Canal to navigation. Its terms are determined by international law.

II. — UNILATERAL ASSIGNATION OF THE SUEZ CANAL TO MARITIME NAVIGATION DOES NOT CREATE RIGHTS IN FAVOUR OF ISRAEL:

Is the existence of a canal in the territory of a State in itself sufficient to create for that State the obligation to acquiece in the passage of ships belonging to other States?[25] To answer in the affirmative would mean that the mere opening of the Suez Canal burdens Egypt with a right in favour of the other members of the international community. In other words, the question is: Has Egypt, owing to the existence of the Canal, lost her rights of sovereignty over this portion of her territory? Or, at the very least, is her sovereignty over the said territory limited by an easement?

In any case, we know that the Canal was assigned to navigation by ships of all countries by the *firmans* of concession even before it was opened; this assignation was also confirmed by Egypt's unilateral Declaration of 24 April, 1957. We therefore have to decide whether the States have acquired rights from such assignation, and whether these rights are rights enforceable against Egypt under all circumstances.

(1) EGYPT REMAINS THE TERRITORIAL SOVEREIGN OF THE SUEZ CANAL:

There is no doubt at all that "canals are part of the public or royal domain of the State granting the concession, and are entirely subjected and subordinated to its rights of ownership, sovereignty

25 - We are here disregarding the fact that Israel is not recognised as a State by the Arab States, particularly Egypt.

and jurisdiction."[26] More specifically, Egyptian sovereignty over the Suez Canal is undisputed.[27]

But if Egypt's sovereignty over the Suez Canal is not in doubt, is it not possible, at least, to admit that there may be some limit to the exercise of this sovereignty? Here, too, the reply of the publicists is unanimous: the freedom of the sovereign State is unlimited, it can "allow whomever it wishes to navigate, levy whatever taxes it deems fit, grant a favoured position to a particular flag, adopt all suitable measures in case of war."[28] Consequently, the State is limited in this field only by what it has itself consented to; no comparison can be made with the legal status of straits, which are natural passageways connecting two open seas, while canals are artificially constructed waterways.[29] Navigation in the Canal cannot be forced upon the territorial State; it always results from the sovereign and completely free will of that State. When this will takes the form of simple tolerance, respect for territorial sovereignty does not permit of its being regarded as the source of a legal title which can be enforced against the State from which it emanates.[30] The decision of the Permanent Court of International Justice in the *Wimbledon Case* is often quoted in support of the opposite

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26 - Henry Bonfils, *Manuel de Droit international public,* 1908, No. 511. Legal publicists are unanimous in their support of this point of view: See Mme Bastid, *Cours de Droit international public,* 1965-66, p. 623; P. Reuter, *Droit international public,* 1963, p. 206; Ch. Rousseau, *Droit international public approfondi,* 1958, p. 201; P. Guggenheim, *Traité de droit international public,* vol I, p. 418; A. Sanchez de Bustamante y Sirven *Droit international public,* 1936, vol. III, p. 91; H. Accioli, *Traité de droit international public,* 1942, vol. II, p. 140, etc.. All these writers expressly affirm not only a right of ownership but also the sovereignty of the State over the canal dug in its territory.

27 - Same references: besides, this sovereignty is expressly recognised in the following documents: Art. 9 of the Act of Concession of 22 February 1866; art. 8 of the Anglo-Egyptian Agreement of 26 August 1936; art. 9 of the Anglo-Egyptian Agreement of 19 October 1954 relating to the Suez base: Security Council resolution of 13 October 1956, U.N. Document S/PV. 742.

28 - Mme Bastid, *op. cit.,* p. 623.

29 - P. de Visscher, *op. cit.,* p. 404; Charles Dupuis, in *Recueil des cours de l'Académie de droit international,* La Haye, 1924-1, p. 194; Baxter in *British Yearbook of International Law,* vol. 31, 1954, p. 191.

30 - Paul de Visscher: *op. cit.,* p. 404-405.

point of view. According to this decision, international agreements reached in connection with the Suez and Panama Canals, "are simply the statement of the general view that, when an international waterway connecting two open seas has been permanently assigned to use by the whole world, this waterway becomes similar to natural straits, in the sense that passage—even of a belligerent ship—does not compromise the neutrality of the sovereign State under whose jurisdiction lie the waters in question."[31] Interpretation of these texts should take into account both their context and all the terms employed in them. The Court only mentioned "assignation to navigation" in the light of *agreed rules* established for the Suez and Panama Canals; it refrained from asserting any "assignation to navigation" arising from a simple acquiescence: this cannot be implied. Furthermore, this court has "re-considered canals as similar to straits not as regards their territorial status nor even as regards the universal right to utilise them, but solely as regards the effect of passage, consented to by agreement, on the laws regarding neutrality."[32] This is precisely the conclusion that the analysis of the Constantinople Convention led us to. Finally, we should add that "it is difficult to believe that this Court should have presumed to attribute a general obligatory force to even such treaty-laws as emanate from a minority of States when, in other circumstances independence and equality of rights among all States are the most certain elements of its doctrine."[33]

It is also to be noted that the *Wimbledon Case* has nothing to do with the rights of third party States. Indeed, all the parties to the legal dispute submitted to the P.C.I.J., Great Britain, France, Italy and Japan, on the one hand, and Germany, on the other, were signatories of the Treaty of Versailles.[34] Thus, no argument

[31] - Judgment of 17 August 1923, A series, No. 1, p. 25, referred to by Ed. Hambro, *La jurisprudence de la cour internationale,* 1961, vol I, no. 157.
[32] - Paul de Visscher, *op. cit.,* pp. 405-406.
[33] - M. Sibert, *op. cit.,* p. 185. The writer quotes, in support of his view, Opinion No. 5 of the P.C.I.J., p. 27. On the limited significance of the *Wimbledon* judgment, see Baxter: *The Law of International Waterways,* p. 11, note 42.
[34] - Baxter: *op. cit.,* p. 175.

in support of the Israeli thesis can be deduced from the *Wimbledon* judgment.

We may, therefore, conclude that, at the present time, the only source of a right of transit through canals recognised by international law is the sovereign will of the territorial State. As regards the Suez Canal, the will of Egypt as regards nations which are not parties to the Constantinople Convention, is expressed in the *firmans* of concession and in the 1957 Declaration, which unilaterally assigned this waterway to international navigation.

(2) THIS ASSIGNATION OF THE CANAL TO MARITIME NAVIGATION HAS NOT CREATED A SUBJECTIVE RIGHT IN FAVOUR OF ISRAEL:

Here, several factors combine to constitute a legal basis for Egypt's thesis which denies both Israel, and foreign ships carrying goods to or from Israel, all right of transit through the Suez Canal.

A. – Israel has, Since its Creation, Been Excluded from the Benefits of the Assignation to Navigation :

Indeed, ever since May, 1948, Egypt has clearly disclosed her will not to allow Israeli ships to transit through her canal. The role of the will of the territorial State has already been discussed; the very existence of the Constantinople Convention constitutes, if need be, additional proof of the decisive role of this will: it is because the naval Powers at that time were conscious of how precarious was the right they derived from the unilateral assignation of the canal, that they negotiated and concluded the 1888 Convention. Even more than these Powers, Israel was excluded from the benefits of this assignation to navigation even before it became applicable to her.

Furthermore, Egypt's assignation to navigation was made for the benefit of States; but Israel, which is a mere human entity, has

never constituted a State in the eyes of Egypt.[35]

B. – Egypt too can Avail Herself of the Law of War:

It has been shown elsewhere that a state of war between Israel and the Arab States (therefore Egypt) still exists, despite the Armistice Agreements of 1949.[36] The Security Council, which affirmed the contrary in its resolution of 1 September 1951, based on the assumption that these armistices were a prelude to an imminent peace, has been refuted by the facts. The Council's motives in adopting this attitude have rightly been criticised as contrary to international law.[37] The Security Council indeed, as an essentially political organ, cannot but be incompetent to settle a problem which is specifically juridical.

Once this is admitted, Israel can no longer avail herself of a right of passage which, even if it really existed, could not be exercised against the will of Egypt as a territorial and belligerent Power. The effect of war is radical; if in practice, it annuls a right granted by agreement, it must *a fortiori,* have at least as much effect in a case where passage is authorised by a unilateral act only.

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35 - For non-recognition of Israel by the Arab States, see report of the Second Committee above.

36 - *Cf., supra,* p. 153 sqq.

37 - Paul de Visscher, *op. cit.,* p. 408. This writer considers that: "It is true to say that the Rhodes Armistice Agreement, as is the case with most agreements of this kind, was intended to prepare for the establishment of a definitive peace, but it seems to us extremely doubtful whether this agreement departed from the general principles of the law of war, according to which the parties are bound, during an armistice, to refrain from acts of active belligerency, but keep all their other rights of war. This interpretation (i.e. that of the Security Council), seems to us all the more disputable in view of the fact that the Rhodes Agreement contains a special clause according to which the parties undertook to release such private ships of the enemy as took shelter in territorial waters as a result of mechanical trouble, the state of the sea or *force majeure.* Such a clause should be interpreted as a special departure from the general rule and is therefore limited to the common law of war. It forbids all falling back on the general spirit of the Agreement, to conclude that there has been a general departure from the law of war.

For similar views, see also Broms, *op. cit.,* p. 136.

The exercise of the rights of war also authorises Egypt to forbid passage through its territory of ships belonging to other States which carry goods capable of aiding the enemy in its belligerent action against Egypt.[38] The assignation of the Suez Canal to navigation can in no way be invoked against Egypt as a territorial Power when her security is at stake.[39]

[38] - Baxter: *op. cit.*, p. 223.
[39] - Broms: *op. cit.*, p. 129.

CONCLUSION

There is a *logic of numbers.*

Fourteen million Jews, scattered throughout the world, are willy-nilly regimented by Israel and her powerful organizations, thanks to a dual political allegiance which many of them accept willingly, and, in so doing, often reverse the order of priorities and give priority to their loyalty to Israel.

Zionist ideology is based on the conviction that all the Jews of the world must achieve a national existence in the historic land of the Twelve Tribes. Israel is determined to put an end to what it persists in regarding as their dispersion, even though the majority of them are unwilling to leave the country in which they and their remotest ancestors were born, for an unknown land.

This theory of relocation which is the very essence of Zionism, makes many demands: it lays down with the utmost vigour the course to be followed by Zionism which, consequently, is inevitably confronted by the temptations of expansionism. Israel, established in conditions of illegality and terror which are only too familiar, cannot, even if she so wishes, abandon her permanent search for "living space." For the past century, during which she has been trying to make her appearance on the world scene, to reconstitute a people through an empire, Israel's policy has been a model of consistency. From the small agricultural colonies to the Jewish National Home, which, people claimed to believe, was no more than a cultural and religious relocation of people, strictly limited in numbers; from the jigsaw puzzle-State conceived by the United Nations to the warring State of 1948; from the conquering Israel of 1956 to the "Greater Israel"of 1967—every stage has been marked by this age-old will to expand. Israel is blithely following a plan which *purely and simply imperils the very existence of several Arab countries* as independent States, after having already erased Palestine from the map of the world. In the three major armed encounters of 1948, 1956, and 1967, Israel has always been

the aggressor, and every time her territory has been enlarged by the hostilities.

It seems quite futile to recall this logic of numbers. To bring all Jews together, Israel must enlarge herself; this makes it necessary to push back the Arabs, and for this to be achieved they must be attacked. This policy has a thousand pretexts for expansion ready at hand to delude public opinion. Thus, in 1965 Mr. Abba Eban asserted that the Arabs, who at first asked for the return of Palestine to the Arabs, then, more modestly, for Israel to retire to the 1948 frontiers, would one day be obliged to ask for no more than a return to the 1966 or 1967 frontiers.[1] This is an unabashed admission of the permanent character of Israel's expansionist aims, and of the premeditation of the attack of 1967; it reveals an unruffled confidence in the force of arms; and finally, alas, it is an indication of Israel's utter contempt for the Arabs.

It is sometimes alleged that the denunciation of Zionism's expansionist aims is groundless, inasmuch as the fourteen million Jews in the world have no intention of abandoning their respective countries, even if they do regard Israel as a second homeland, or even, in some cases, their first homeland. In reality, it is of little consequence to know whether the Jews *in fact* desire or refuse to emigrate to Israel. The important thing to remember is that Zionism, both in theory and in structure, has made this Return of all the Jews its basic premise, and always behaves on the assumption that, one day, these fourteen million will settle in Eretz Israel. To demand lands on which to settle immigrants, then to clamour for immigrants to occupy the lands acquired, to claim the waters of the Jordan to meet the needs of an increasing population and then to call for such immigration in her prayers, indeed in her legislation, to conquer new territories in the expectation, albeit problematic, of the influx of individuals towards Israel, then to broadcast an urgent appeal to world Jewry to populate the vast Arab territories annexed in June, 1967—this is the vicious circle in which, through a sort of infernal

1 . Abba Eban in: *Foreign Affairs,* July, 1965.

logic, the expansionist dynamism of Israel is imprisoned.

Mr. Ben Gurion was thus able to affirm to the students of the Hebrew University of Jerusalem in 1950 that "the Israeli *empire* (sic) should include all the territories situated between the Nile and the Euphrates." By what means? "It will be erected by *invasion* as well as by diplomacy." "I agree to form a government," he added on the occasion of his investiture in 1952, "on condition that I am allowed to use all possible means to enable us to extend towards the South." In such a profession of faith lay the seeds of the Suez adventure of 1956. The same man, in a recent letter to the President of the French Republic, continued to claim for *Eretz Israel* "the lands lying both to the east and to the west of the river Jordan" on the ground that ... "such was the country of Joshua."[2]

The map of this "Greater Israel," engraved on the pediment of the Knesset, Tel-Aviv's parliament, is a permanent reminder to the Israeli legislator of his country's annexationist aims in the other Arab countries, after Palestine, a permanent provocation, and a blow to the independence and sovereignty of neighbouring States, which, however, does not shock those who have been conditioned to look upon Israel as a peaceful country in constant danger of extermination at the whim of the Arabs.

From the earliest days of the Zionist movement, its adherents have set themselves territorial objectives going far beyond the present frontiers of Israel. There have, admittedly, been profound differences of opinion in this field, as appears in Herzl's *Memoirs,* in the Memorandum[3] submitted to the Peace Conference at Versailles on 3 February, 1919, and in certain other documents, but Zionism's geographical ambitions, ready though they have always been to adapt themselves to circumstances, have always included among their objectives South Lebanon, Sinai, Northern Hejaz and the east and west banks of the Jordan. A Zionist writer, who certainly wished to be thought moderate, was to define the front-

[2] - Mr. Ben Gurion's letter to General de Gaulle, *Le Monde,* 10 January, 1968, p. 3.

[3] - *op. cit.,* (*cf. supra,* p. 50).

iers as including Judaea, Samaria, Galilee and ... "the country beyond the Jordan,"[4] adding: "A Palestine extending from the Mediterranean to within a certain distance from the Hejaz railway and from the river Litani to a point well to the south of Gaza and of the Dead Sea, including the latter, would meet *the needs of the Jewish people.*"[5]

The series of expansions carried out by Israel during the past twenty years, and the course which events have taken since 5 June 1967, are certainly alarming. What we are witnessing is the gradual *Anschluss* of a number of Arab States, all of which are members of the United Nations, all of whose sovereignty and territorial integrity are guaranteed by international law, but with no assurance that their constant aggressor will be stopped or penalised by the international community, or even that this aggressor will be designated as such. On 6 June, 1967, a Parisian journalist, either misled or biased, put out the stupid falsehood of an Arab attack on Israel. Today, it has at least been recognised that Israel not only began the hostilities but had also premeditated and carefully prepared her attack.[6]

* * *

Thus the logic of numbers calls forth the logic of expansionism, as Zionism's basic ideology, the course it has followed and its ever more strongly worded statements, which scorn evasion in their unabashed arrogance, all bear witness.

But this logic of numbers, which makes a reality of the will of all the Jews in the world to relocate themselves, also implies another logic, that of Jewish refusal to assimilate, that of *self-segregation.* Zionism is uncompromising in its rejection of the

4 - Marcel Bernfeld: *Le Sionisme, op. cit.,* p. 386.

5 - Bernfeld: *op. cit.,* p. 387. (our italics).

6 - Eric Rouleau, Jean-Francis Held, Jean and Simone Lacouture: *Israël et les Arabes. Le Troisième Combat,* Paris, éditions du Seuil, 1967, pp. 119 and 122.

assimilation of Jews by non-Jewish societies, its object being to encourage the Jews of the Diaspora to emigrate to Israel. This policy has been pushed to extremes and has led certain Zionists to extol the "purity of the race" so that "God's chosen people" might fulfil their special destiny.

By allowing themselves to be regimented by the Zionists, even to the point of behaving as persons with dual nationality, or even, in some cases, as Israelis first and foremost, the Jews of the world have borne witness to the existence and the strength of this self-segregation.[7] Herzl wrote that the conservation of the "Jewish people and race" in their pure state is due to the Hebrew marriage laws which "forbid the mixing of races."

This logic of self-segregation and of loyalty to Israel also implies *racial exclusiveness,* i.e. it calls not only for the immigration of Jews into Israel but also for the radical eviction of non-Jews from the land "destined for the Jews." It is in this manner that Zionism has succeeded in bringing about the "final solution" of the "Arab problem" and has created a "Palestine without Arabs." We can now understand the driving out of the refugees just as we have already understood the driving force behind expansionism.

At its last ordinary session, the United Nations recalled the impressive list of its resolutions on the refugees, resolutions which have not been implemented, and noted "with deep regret" that the repatriation of these Palestinians has not taken place.[8]

The United Nations will not realise the futility of its repeated speeches until it understands what the Israeli edifice is made of:

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[7] - *Cf.* the penetrating studies of Mr. Fayez A. Sayegh: *Zionist Colonialism in Palestine,* Beirut, 1966, p. 54.

[8] - Resolution 2341 (XXII) of the General Assembly recalling its resolutions 194 (III) of 11 December 1948, 302 (IV) of 8 December 1949, 512 (V) of 26 January 1952, 614 (VII) of 6 November 1952, 720 (VIII) of 27 November 1953, 818 (IX) of 4 December 1954, 916 (X) of 3 December 1955, 1018 (XI) of 28 February 1957, 1191 (XII) of 12 December 1957, 1315 (XIII) of 12 December 1958, 1456 (XIV) of 9 December 1959, 1604 (XV) of 21 April 1961, 1725 (XVI) of 20 December 1961, 1856 (XVII) of 20 December 1962, 1912 (XVIII) of 3 December 1963, 2002 (XIX) of 10 February 1965, 2052 (XX) of 15 December 1965, and 2154 (XXI) of 17 November 1966.

self-segregation throughout the world, immigration into Israel, expansionism and, finally, exclusiveness, which casts the non-Jew outside the Jewish nation. All pleas made to Israel to allow the Palestinians to return to their homeland stem from a ludicrous ignorance of the forces lying behind the Zionist system.

The effectiveness of the United Nations can be measured by its capacity to jam the infernal machine which we have just taken to pieces, which pieces run the gamut from self-segregation to dual loyalty, from immigration to aggression, from expansionism to racial exclusiveness. This presupposes that the Powers which hold some sway in this world, are prepared at long last to say what the director of the *Journal de Genève* said in August 1967: that *"Israel is going too far"* in continuing to annex Arab territories. This would also presuppose that the majority of Jews in the world have realised that the time has come for them to refuse to continue in the service of Zionism, and that States will no longer tolerate that in their territory the Zionists should seize certain attributes of their sovereignty and lord it over Jewish communities, so as to keep them in strict and chauvinistic obedience to Israel, and to "excommunicate" them when they dare state too frankly what they are, i.e. no more and no less than citizens of the various States in which they were born. Finally, this would presuppose that the States should urgently—in all the meanings of the word urgent—call on the Israelis to withdraw from the occupied territories.

* * *

This occupation itself also has peculiar features, which can only be explained by reference to the basic premises of Zionist ideology.

In the view of publicists, military occupation following a war is of an extremely precarious nature, and confers very limited rights upon the occupying Power. It has no effect on the sovereignty of the State over that part of its territory which is occupied by foreign

troops.[9] Modern international law considers occupation as "an occurrence due to war, based upon, and maintained by, force." It is here that military occupation differs from annexation. The first cannot confer upon the occupier sovereignty over the territory seized.

But today, since the aggression of June 1967, Israel is not only committing an abuse of power in certain territories, by exceeding the competence recognised for an occupying Power, but is also fundamentally violating international law in other areas in which occupation has become annexation.

Annexation cannot legally take place unless the territorial sovereign expressly renounces his territories which have been occupied. In 1949, Mr. Abba Eban, then Israel's representative at the United Nations, maintained that his government had annexed territories beyond the limits laid down in the Partition Plan, by virtue of the consent of the neighbouring countries, a consent which, he claimed, derived from the Armistice Agreements![10] Who is going to believe this astounding plea? This is no doubt the reason why today, after the annexations of 1967, it is not even considered necessary to given explanations. Statements pour forth, full of quiet confidence. Decisions find their justification in force. On June 27, 1967, the Knesset "voted" the annexation of the Arab part of Jerusalem, thus admitting that this was the only real objective of the aggression of June 5. To the United Nations resolution of 4 July calling on Israel "to revoke all measures already adopted and to refrain from taking any action which could alter the status of Jerusalem," Israel replied that annexation is in its view "irreversible and irrevocable."

Following the example set by his Minister of Defence, Mr. Moshe Dayan, for whom "Israel cannot go back to the ridiculous frontiers of 1948," and his Foreign Minister, Mr. Abba Eban who "does not believe that the map of June 5th can be re-established,"

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[9] - Debbasch (Odile): *L'occupation militaire,* thesis, Paris, 1962. Articles 42, 43, and 48 of the *Règlement de La Haye* of 1907 stipulate that the belligerent, by occupying enemy territories, does not acquire sovereign power over it.

[01] - Security Council, 433rd meeting, 4 August, 1949.

the Prime Minister of Israel, Mr. Levy Eshkol, affirmed on 6 September 1967 that there is "no more natural frontier than the Suez Canal."

Jerusalem annexed, the territories on the West bank of the Jordan "liberated," the frontiers of Israel advanced to the Suez Canal, the Golan heights in Syria absorbed, such is the "Grand Plan" of Zionism, which is in the process of being realised. It will not come as a surprise to anyone except those who, against all reason, look upon Israel as a peaceful country. But it is only the inexorable logic of numbers and expansionism that can fully explain this phenomenon, which is outside the law, against the law and against right. Israel's aggression was launched to annex territory and to expand. Having succeeded, it would be absurd if the aggression did not have this result.

There is also a sort of *logic of the absurd,* which would like the Arabs, in response to Israel's progressive aggrandisement, to reduce the problem of Israel to the dimensions of her latest conquests. As Semites, it is suggested, the Arabs should bury in the grave of family quarrels what their Israeli cousins took from them in the course of their first two aggressions, and argue only about what they have lost since 5 June 1967. As realists, they should know that no other course is open to them after their crushing defeat.

This invitation to the Arabs to submit to territorial acquisitions, old or recent, which only pave the way for others, suggests the abandonment of the view of the Palestine problem as a whole to trap the Arabs in a discussion restricted to the latest, but certainly not the last, Israeli territorial thrust. There might be some small merit in being "realistic" in this manner, if this shifting of the whole problem could at least provide the Arabs with the certainty of being definitely secure from further Israeli expansionism. But, in fact, what is being recommended to the Arabs is an "escalating realism." They are constantly being asked to accept the event which has just taken place while discussing the one which Israel is always in a position to bring about. This realism has both a name: "ostrich

policy," and a consequence: progressive anaemia of the Arab nation, which neither began nor ended on 5 June 1967. *What is called in question is, first of all, what has been done since the disastrous United Nations Partition resolution which carried within itself the seeds of all subsequent aggressions; and then, and this is the most important thing, the necessity to jam the machines which are carrying Zionism towards self-segregation, expansionism and racial exclusiveness.*

It is no more a problem today of deciding what is to be done with the territories occupied by Israel after her third aggression, than it may well be tomorrow of discussing the fate of those territories which Israel may conquer as a result of a fourth aggression launched to achieve the final realisation of her old dream of "Greater Israel."

Here lies the tragedy. Israel, fired by her Zionist philosophy, contains in herself, and through herself, all the risks of explosion in the Arab Middle East.

How tragic and unique is the fate of the Palestinian people! At a time when decolonisation, already begun after World War I, had enabled many peoples to recover their lost freedom, Palestine, already far advanced along the road to independence, was deprived of it at the very moment when she was ready to accede to it. A strange distortion of the curve of history!

Given a local government in 1920, promised early independence, Arab Palestine is the exception, the freak case of a young nation still-born as a result of the blows of Zionism. That is why this tragedy, a deliberate shunting error on the open line which leads to decolonisation, is more cruel and more unbearable in a world which is freeing itself from the demons of domination.

Resolution Adopted by the Seminar on

27 July 1967

The Seminar of Arab Jurists, meeting in Algiers from 22 to 27 July 1967:

Having studied the legal aspects of the Palestine problem;

In view of the fact that the Arab people has exercised its sovereignty over Palestine where it has lived continuously and unchallenged;

In view of the fact that, after the First World War, Palestine was placed under a League of Nations Mandate with a view to preparing it for independence under the leadership of a national government;

In view of the fact that the principle of self-determination confirmed by the Charter of the United Nations and by successive resolutions of the General Assembly, should apply to the Palestinian people which claims its right to freedom and independence;

In view of the fact that the creation of Israel in 1948 is a colonial phenomenon of aggression, resulting from the alliance of the world Zionist movement with imperialism; that this creation has resulted in the expulsion of the Arabs from their homeland in which they constituted the majority and in the settlement of foreign immigrants having no historical, political or cultural links with this land;

In view of the fact that in establishing herself on a narrow ethnic basis, and a fictitious one at that, and in her determination to be the State of the Jews, Israel is essentially a racialist pheno-

menon, practising, as regards the native Arab inhabitants, who have been reduced to a persecuted minority, a policy of racial discrimination which is evident in her legislation regarding nationality, agricultural property, work or education;

I. — Declares:

(a) that the United Nations resolution of 1947 concerning the Partition of Palestine is null and void, the General Assembly having no competence to create States or to put an end to their existence, especially when by so doing it infringes the right of peoples to self-determination;

(b) that the birth of Israel on a basis not recognised by international law is not of a nature to give rise to a regular situation to which could be assured that protection acknowledged by international law in situations that are legal;

(c) that the rules regarding acquisitive prescription are not applicable in this case, as the Palestinians have never given up their claim to their homeland and have continuously asserted their legitimate rights in it;

II. — Affirms:

(a) that the Arab refugees have an inalienable and imprescriptible right to return to Palestine, in accordance with the successive resolutions adopted during twenty years by the United Nations, and to put an end to foreign immigration;

(b) that Jerusalem, an Arab city over which Arab States have successively exercised their sovereignty in conditions which guaranteed the protection and freedom of access to the Holy Places, has been annexed by Israel since its latest aggression of June 1967, in conditions which the U.N. General Assembly has condemned in two resolutions adopted during the XXIst extraordinary session; and that the internationalisation of the City does not constitute an alternative solution consistent with respect for Arab sovereignty or

with the right of peoples to self-determination, and cannot be considered as the ideal status for the protection of the Holy Places;

(c) that the diversion of the waters of the Jordan by Israel is an unlawful act, incompatible with established rules for the utilisation of the waters of international rivers, and constitutes an infringement of the rights of Syria, Lebanon and the Kingdom of Jordan;

III. — Observes:

(a) that the Gulf of Aqaba, historically an Arab gulf, forming part of the territory of Arab States, over which they have continuously exercised their sovereignty, is, moreover, connected with the Red Sea by a navigable opening which, according to the rules of the law of the sea, forms part of Arab territorial waters like all the waters of the Gulf; and that the illegal presence of Israel on the Gulf, which began in 1949, after the conclusion of the Armistice Agreement with Egypt, following the irregular occupation of the Arab village of Umm Rashrash and its transformation into the port of Elath, only allowed Israel to pass through the Gulf of Aqaba and the Straits of Tiran as a result of her aggression against Egypt in 1956;

(b) that the Constantinople Convention of 1888 and the Declaration of 1957 by the Egyptian government do not confer upon Israel any right of passage through the Suez Canal, particularly as the Convention recognised Egypt's right to adopt measures of self-defence in the Canal.

IV. — Condemns:

the latest aggression against the Arab countries and deplores the failure of the United Nations Organs to apply the principles of the Charter for the restoration of right;

V. — Decides:

(a) to expound the results of its work in a book which will be

published in several languages for the benefit of world public opinion;

(b) to organise, in a place, and on a date, to be fixed later, an enlarged juridical seminar to include, besides Arab jurists, jurists from other parts of the world.

Closing Speech of the Seminar Delivered on 27 July 1967 by Mr. Mohammad Bedjaoui Minister of Justice

Ladies and Gentlemen,

Since I once again have the honour of discussing before this distinguished gathering the painful problem of usurped Arab Palestine, allow me to do so after paying a doubly deserved tribute to its members who have here rendered service to the cause of right with as much science as conscience.

As jurists, you have approached all the fundamental questions of the Palestine conflict, without neglecting any of them, subjecting to the most objective criticism the arguments adduced in justification of successive armed attacks, and dismantling the "dogma" of the legitimacy and legality of the State of Israel.

Although grievously traumatised by the sufferings of our Arab nation, you have not allowed your emotions to become involved in your debates. And this adds, if any such addition be needed, to the profoundity of your thinking and the vigour of your analysis.

I bear witness to this and, but for fear of being overwhelmed by the vastness of the subject, I should like to try to draw up the balance sheet of your achievements.

You have, first of all, enumerated the many irregularities which mark the juridical history of Israel, and noted that it is the product of innumerable misconceptions and erroneous interpretations.

Israel embodies many an illegality, both in her basic premises and in her present and temporary condition. Her foundations bear the unmistakable marks of these illegalities, and her very creation is vitiated by an absolute nullity, which you have vividly demonstrated.

Never has the creation of a State been preceded by more deceit and fraud than that of the State of Israel, for the ideological components which contributed to its making are devoid of all value as regards international law. Its juridical components are a tendentious arrangement of rules and principles which are, however, extremely precise in their provisions.

(1) First of all, the most important *ideological* aspect, and the one most frequently emphasised, is the power of the religious feeling whose existence, it is said, justifies the establishment of a State-framework in favour of a community gathered around the same God.

But to belong to the same religion is one thing; to claim that a State must be created for a group of individuals because they all adhere to the same creed is something quite different. There is a link missing in this argument, I should like to know what system of laws can be cited to justify this claim. You know that such a system does not exist, and that to assert the contrary is to beg the question, and quite gratuitously at that.

In the same way, it is often asserted that the persecutions to which the Jews were subjected would no longer have a *raison d'être* if they came up against the barrier of a hypothetical State in which this religious community could at last have found the natural and normal framework for its protection.

Here again, let us note that there is a link missing in the argument—the link, required by the logic of law, between the undeniable existence of persecutions and the creation of a State for the victims. International law has never considered that the violation of human rights, however blatant, opens the door to the creation of a State for the persecuted.

One cannot but observe how unsystematic and how confusing is the juxtaposition of two concepts—the humanitarian and the juridical—which are utterly alien to each other.

(2) The same intellectual poverty, and the same levity, are to be found in the specious garb of pseudo-juridical arguments.

In an examination of the pseudo-juridical components of the State of Israel, the Balfour Declaration occupies a special place. Arthur Koestler has described it as a promise made by a State to a private individual to create a nation on a territory belonging to another nation. This official promise, made by the United Kingdom to Rothschild, to establish a State from the territory of another State, without asking its consent, or even consulting it, we still find astounding. What right had the United Kingdom to dispose of a territory over which it exercised no sovereignty, and what is more, in favour of a group of individuals with no official status?

Your Seminar has well said what had to be said: that Lord Balfour's promise could not be binding on those whom it dispossessed with such astonishing off-handedness. As a unilateral act conceding the territory of others it had no more value than another act of the same nature, forcible appropriation.

Should we be surprised that the Balfour Declaration did not raise a storm, or, at any rate, give rise to protests when it was published, in view of the fact that Palestine should have been regarded by the League of Nations, as a State entity like all A Mandates? In 1920 Palestine was an Arab State, which the League of Nations had no competence to promise to others, it was on the contrary, in duty bound to protect its territorial integrity.

(3) Indeed, Article 22 of the League of Nations Covenant opened the way to total independence for the territories put under the Mandates System, since it recognised that the communities which formerly belonged to the Ottoman Empire had reached a stage of progress sufficiently advanced for their existence as independent nations to be affirmed.

It was to be expected that the British Mandate over Palestine —I say Palestine, and not Israel—would arrange for its rapid accession to independent statehood.

But the unique Article 6 of the Palestine Mandate, adopted in violation of Article 22 of the League of Nations Covenant, incorporated the terms of the Balfour Declaration and made them even

more intolerable. By accepting the establishment of the Jewish National Home, it contradicted the solemnly proclaimed recognition of Palestine as a State entity.

The policy of the League of Nations was all the more ill-founded in that the Allied and Associated Powers had, at the end of the First World War, given a prominent place to the Wilsonian principle of the right of peoples to self-determination, and had held a series of plebiscites in Central Europe, which led to the birth of a number of State entities.

(4) More precisely, does the *principle of self-determination,* i.e. the right of peoples to determine their destinies, constitute a justification of Israel's claim to remain where she is?

We shall be saying nothing new if we recall that this principle can only be applied if certain conditions are met.

Does this mean that we wish to repudiate a principle whose application has enabled Algeria, in particular, to recover her independence? I only need to recall that one of the conditions for the application of this principle is the existence of a *people,* living in its own land, not of a religious community which the end of a two-thousand-year Diaspora was to bring to Palestine, an Arab land.

Only those who have been in Palestine for many centuries are entitled to self-determination, not men only recently brought back in a mass immigration to Arab territory set up as a State, and never considered as *"res nullius."*

Such are some of the "titles" constituting the legal foundations of the State of Israel. The mere statement of these "terms" reveals the fragility of a structure which rests on principles and rules whose true meaning has been distorted.

Need I add this fundamental feature, which your deliberations have brought to the fore—the colonial character of the establishment of Israel? From the first a settlement colony, the "Jewish National Home" has acquired lands at the expense of others by resorting to legal techniques and political methods closely resembling those which are only too familiar to all who have known what it is to

be colonised. I am convinced that your deliberations will arouse the conscience of all anti-colonialists, who will never believe that such changes were perfectly legitimate, or that the mésalliance between false juridical principles and generous feelings of compassion constituted a sufficient foundation for the creation of a State.

By your precise analysis of principles and facts, you have shown that the question of Israel is neither more nor less than a manifestation of a well-known phenomenon—that of colonialism— not forgetting that it is more dangerous than all other manifestations of this phenomenon, inasmuch as underlying it is the philosophy of Zionism, founded on a narrowly religious basis.

Nor do the resolutions of the United Nations provide Israel with the legitimacy denied her by international law.

The resolution on the Partition of Palestine adopted by the United Nations on 29 November, 1947 is a new breach of international legality which, alas, must be entered on the debit side of the World Organisation's balance sheet.

Your work has given a detailed picture of the incompetence of the United Nations, in view of the provisions of its Charter, to recommend the partition of a territory.

The United Nations, as has been observed by the International Court of Justice at the Hague, has succeeded the League of Nations. It could not, therefore, without violating the obligations arising from the Mandate, prescribe the partition of Palestine, which was due to accede immediately to the rank of an independent nation. But, secondly, and this is the most important point, the Partition resolution was inconsistent with the very aims of the Organisation and with its own rules of competence.

You have considered, quite rightly, that this partition, adopted in utter disregard of the inalienable rights of the Palestinian people, violated both general international law and the law of the United Nations.

It cannot be sufficiently emphasized that this unfortunate compromise on which it was intended, and believed possible, to establish once and for all the State of Israel, has solved nothing, and will

solve nothing, as long as a mutilated Palestine is not reinvested with its full rights.

* * *

You have taken stock of the consequences of this situation.

Israel cannot avail herself of any form of prescription whatsoever as regards a territory which is Arab.

Its rights being imprescriptible, occupied Palestine will inevitably return to the Palestinians, just as Poland was resuscitated after being partitioned several times and buried under the weight of foreign dominations, and just as other nations have become themselves again.

Some, who readily acknowledge the juridical and political evidence proving that Palestine was usurped by the Zionists, nevertheless affirm this principle of prescription, although it is inapplicable in this case, and resignedly emphasise the impossibility of reversing a *fait accompli* which took place twenty years ago.

When we are not being held responsible for a situation which is considered, with rather too much complacency, as being too inextricably complicated to hope for a solution, or when the Arabs are not being asked to find for themselves a solution for a tragedy for which they are not responsible, *we are advised to accept the unacceptable, on the ground that any other attitude on our part can only be regarded by world opinion as a new quest for the genocide of the Jews.*

This new argument, so powerfully advanced, is no more than blackmail of the Arab conscience.

But, during these days of work and reflection, you have patiently unravelled every thread of the new web so cunningly woven by the Zionist tarantula, and once again taken in your hands the straight line of truth.

The Zionists have diabolically striven to complicate a problem which it is in their interest to present as completely insoluble—unless they say, the solution comes about through the extermination

of their whole people. For they well know the extent of the armoury offered them by the guilt complex of the West for the appalling massacre of so many of their people.

If genius lies in simplification, Israel's genius lies in associating the memory of the Nazi camps, which she studiously keeps alive in the conscience of the world, with the barbarous intentions which she attributes to the Arabs.

The Arabs are certainly determined to destroy Israel as a State and a political entity established on an Arab land. But the resurrection of Palestine does not, as it is alleged, imply a "Saint Bartholomew's Day Massacre" of the Jews. The Arabs, who have always protected Jewish communities at a time when the spirit of tolerance was conspicuous by its absence elsewhere, will never fail to respect human rights. In a Palestine recovered by its people, who are at present living in cruel exile, the different religious communities will find all the guarantees and protection necessary for them to live in peace.

From this point of view, your Seminar has certainly been fruitful, for what you have done is to draw up the Arab nation's manifesto for the liberation of Palestine, and to establish the most damning possible case against the alleged "statehood" of Israel.

From that moment on, the clouds which darken the skies will be dispersed, hesitations will fall away, and those who have gone astray will come back to us, for, to borrow an expression which contains a world of truth, you can fool some of the people all the time, all the people some of the time, but you cannot fool all the people all the time.

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